United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

74-2340

United States Court of Appeals

For the Second Circuit.

ALLEN & COMPANY,
Plaintiff-Appellant,

against

OCCIDENTAL PETROLEUM CORPORATION,
Defendant-Appellee.

JOINT APPENDIX

Volume III—Pages 1089a to 1750a.

UNITED STATES COURT OF APPEALS
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Mr. Greenspoon: That is P36, your Honor.

The Court: That is one of the three—36, 37 and 38, isn't that right?

Mr. Greenspoon: Yes, your Honor.

"A. Yes. Dr. Hammer and me.

"Q. Can you tell us where, that is, in what country that document was signed? A. That was in London, in his apartment.

"Q. That is Dr. Hammer's apartment? (1932) A. Yes.

"Q. I show you what has previously been marked as Plaintiff's Exhibit 33 for identification, and I ask you if this is the check which Mr. Hammer gave to you in London?"

Mr. Greenspoon: That, I think, is Plaintiff's 40, now, your Honor.

"A. That is right."

Mr. VanVoorhis: Now, passing from the bottom of page 29 to page 30, line 20:

"Q. Is the European Metal Company a company of yours? A. That is right."

* * *

"Q. Mr. Galic, I show to you Plaintiff's Exhibit G-8 for identification (P53), and I ask you to read to yourself the first paragraph and tell me when you have read it."

* * *

(1933) "A. Yes.

"Q. Can you tell us when you went to Tripoli? A. It must be a couple of days before. I cannot remember now.

"Q. Can you tell us how many days before October 19, 1964, you were in Tripoli? A. That I cannot tell you. I cannot remember the date.

"Q. Can you give us an approximate— A. If I tell you anything approximate, it will just be from my head. What

I see from my letter here, it must be couple of days before these 19 October, is all. Don't ask me now."

* * *

"Q. What is your best recollection as to who asked you, if anyone, to make that trip to Libya? A. Dr. Hammer."

* * *

(1934) "Q. When you traveled to Libya with Vaughan, was that in relation to the trip mentioned in Plaintiff's Exhibit G-8 for identification?"

Mr. VanVoorhis: That is P53.

"A. Probably.

"Q. You cannot say probably.

"What is your best recollection? A. I traveled—I find Vaughan there.

"Q. You found Vaughan there? A. He was probably half a day before me.

"Q. Did you travel with Brenner to Libya in relation to the trip mentioned in Plaintiff's Exhibit G-8 for identification? A. Yes. I think it was Brenner."

Mr. VanVoorhis: G8 is P53.

Passing now from line 9 on page 51 to page 52, line 8.

"Q. Will you tell us what was said on that occasion when you visited with Mr. Kabazi? A. They was telling that they interested in to have a concession. Kabazi was very floating with answer. He was asking if they have oil refinery.

"So Brenner told, 'No, we don't have an oil (1935) refinery. Probably we will develop an oil refinery. And we have a financing of Allen & Company. We are backed for any amount. I can tell you, Mr. Galic, he is from the Allen & Company here.'

"So I told him, it's no question, 'Excellence, is no question about any trouble that can be—that Occidental can no develop, and going in the oil, the financial source is so big, there is no question about money of the investing concession.'

"But he Kabazi told me, 'You know how much you needed—some people was drilling here for 30, 40 million dollars and they don't find the oil.'

"So they told—Brenner was more talking, he told 'Don't worry about that, we have financing for our company who is—we don't have to worry about these things.'

"Q. Was the name of the financer mentioned at this meeting? A. Oh, yes.

"Q. What was the name mentioned? A. Allen & Company.

"Q. Who mentioned Allen & Company? A. Brenner was who mentioned, I think.

"Q. Did you mention Allen & Company, too? A. Yes. And he Galic is a close friend and represented (1936) Allen & Company.

"Q. That is what Brenner said? A. Yes. Brenner or Vaughan. I think it was Brenner.

"Q. And what did you say about Allen & Company, if anything? A. I told him that there is no question about any kind of money for any kind of deal they were involved in.

"Q. Did Mr. Kabazi ask any questions about Occidental on that occasion? A. He ask many questions there. But it was—all question, you know, that first time we was introduced to him there, he ask what they doing. Are they in oil? Do they have wells? Do they have a refinery. Come a question they don't have a refinery. The problem is that refinery can be done and the progress of Occidental if they have success in Libya so that they will develop more this—

"Q. Mr. Galic, will you tell us what you mean by 'more this'? A. How he Brenner told before, they Occidental

have a financing of Allen & Company so they don't worry about anything. They was not to worry about anything about refinery or any money.

He was—Kabazi told, you know, some company they sent 30, 40 million dollars and they don't find it, oil.

(1937) "So we told him—I told him in very short—'Don't worry, Excellency, about any money here, Allen & Company is banker of the deal and associated, so there is no question about that how much will cost and how much will be spent."

Mr. VanVoorhis: Omitting the colloquy.

"Q. What was said about fertilizer, if anything? A. We told him that we have an appointment with Ministry of Industry, and we will talk with him—he told that is not my department. Probably will know from him what you can do it here in this country.

"Q. Was there anything else said about fertilizer? A. No. We have an appointment with Ministry of Industry, who was 24 hours later or same day, afternoon, next morning, and there we was talking about fertilizer.

"Q. Do you remember the name of the Minister of Industry? A. Yes. I think it was Department of Agriculture.

"Q. What was his name? A. I don't know.

"Q. Did you have a meeting the next day with the minister? A. Yes.

"Q. And who was present at that meeting? A. Brenner and me, I think. I don't know if Vaughan (1938) was there. I think just Brenner and me.

"Q. Can you tell us what was said by the three of you at the meeting? A. That they were in fertilizer business, Occidental. They have a department now, and he, Brenner, is in Paris. And they wanted—they wanted to do—Libya needed buy its fertilizer, so they wanted from Libya to distribute to all African country, Egypt, Tunisia, all over, and manufacture there. Libya was planning to do in big-

ger way. But they was expert and they grant it, all production that will be taken for 10 years. Everything that is produced in Libya that can be through Occidental or through fertilizer company that can be taken all this amount for 10 years in advance."

Mr. VanVoorhis: Now, passing from line 7 on page 57 to page 58, line 12.

"Q. At the Kabazi meeting—incidentally, where was that meeting held? A. The Ministry of the Oil.

"Q. In Mr. Kabazi's office? A. Yes, in the office.

"Q. At that meeting, was there any mention made of what you were doing there, just yes or no? A. Yes.

"Q. Who mentioned it and what was said? (1939) A. It was Brenner who told him—when was question of refinery and what they can do and so, Mr. Galic is from Allen & Company and he will be in charge and to continue to talk about concession in oil and so forth.

"Q. Talk with whom? A. To him and to the authority.

"Q. Who is 'him'? A. Kabazi."

Mr. VanVoorhis: Passing from line 5 on page 59 to page 61, line 7.

"Q. Mr. Galic, during this period from, let's say, October, 1964 to July, 1965, did you have any conversations with Mr. Brenner? A. Oh, yes. I have many conversations."

Mr. VanVoorhis: Passing from line 10, page 61 to page 62, line 5.

"Q. What did Mr. Brenner tell you? A. That every time when he go to Libya, he is reporting to Occidental Petroleum.

"Q. Did he tell you whether or not those reports were written or oral? A. No. It was written.

"Q. That is what he told you? A. Yes.

(1940) "Q. Mr. Galic, Mr. Ogbi refers to a postponement of the visit until December 11th. Do you see that in the second paragraph of Plaintiff's Exhibit G-10 for identification?"

Mr. VanVoorhis: I don't know whether that exhibit is important.

Mr. Lewis: I think it is P65.

Mr. Greenspoon: Yes.

The Clerk: P65 for identification is being offered at this point.

Mr. Nizer: It's totally irrelevant, your Honor, and hearsay and prior to December 17th. I don't see its purpose at all. It has nothing to do with this matter.

Mr. VanVoorhis: I am not so sure that it's particularly important. I just read the question for the sake of continuity because there was only one question and answer in between.

The Court: We will receive it for whatever value it has with relation to the rest of the documents.

(P65 received in evidence.)

"Q. Did you make a trip to Libya in December of 1964? A. I think yes.

"Q. I show you Defendant's Exhibit 2 for identification and I ask you if you wrote that letter to Mr. Charles Allen? (1941) A. Yes."

Mr. Greenspoon: That is Plaintiff's Exhibit 66, your Honor.

"Q. In the very first paragraph you say, 'I took another contact in Libya.' Do you see that? A. Yes.

"Q. Who was that contact? A. Kabazi.

"Q. You have already met Kabazi. Who was this contact?"

Mr. Nizer: I think there, Judge VanVoorhis, you should read my objection because it deals not with general colloquy.

Mr. VanVoorhis: All right. I will.

"Mr. Nizer: Objection. Now, I want the record to show that the witness is being coached, directed as to his answer and a suggestion made that his answer was incorrect and that another answer should be given and I object to this."

Mr. VanVoorhis: Is that satisfactory to you?

Mr. Nizer: Yes, it is. You notice that he does change his answer after that question.

Mr. VanVoorhis: I don't really think he does. I won't argue the point.

"Q. Will you read it again, Mr. Galic— (1942) A. You ask me like boom, like—

"Q. Take your time. Tell us who that other contact was that is mentioned in your letter, Defendant's Exhibit 2 for identification."

Mr. Nizer: Please read my objection again.

Mr. VanVoorhis:

"Mr. Nizer: I object to this on the grounds it has been asked and answered and this is an attempt to impeach his own witness.

"A. Yes. It was his brother-in-law of Kabazi.

"Q. What was his name? A. Khogia.

"Q. Did you meet Mr. Khogia? A. Yes.

"Q. During your December visit? A. Yes.

"Q. Did Mr. Khogia do anything for you? A. Yes.

"Q. What did he do? A. He introduced me to Kabazi privately.

"Q. What do you mean by privately? A. I mean he take—he takes me to his home.

"Q. Socially? A. Socially, yes.

"Q. Where did he take you to? (1943) A. To his home.

"Q. Whose home? A. To Kabazi's home. He takes me in night, it was 10:00 or 11:00 o'clock evening, he—

"Q. Did you have conversations with Mr. Kabazi at his home? A. Yes. In the beginning, in the first couple of days we don't have—I don't have any conversation about oil. About concession. The first two, three meeting what I have with him, it was starting when I know Khogia, I ask Khogia what Kabazi is doing privately. And he told me he was in the poetry, writing the books, writing the scripts."

Mr. VanVoorhis: Passing from line 2 on page 65 to page 66, line 1.

"Q. What did Khogia say to you about Kabazi, if anything? A. He told me he is in poetry, he is writing scripts and so on, and I told him I am doing pictures about Divine Comedy, probably that he know very well, and especially from the Italian show that it is a very high point that he told me.

"The Witness: I like to discuss with him my film.

"Q. Discuss with whom? A. Kabazi. And then he see afternoon, the same day, (1944) and he told he, Kabazi, likes to see me. And then he, Khogia, bring him about 11:00 o'clock, and I stay with him until about 3:00 o'clock in the morning.

"Q. Stayed with whom? A. Kabazi."

The Court: Well, the copy I have, on line 13, in the middle of the sentence, "and he told he, Kabazi, likes to see me. And then he, Kabazi, bring him about 11 o'clock"—you read that.

* * *

"Q. What did you talk about on the first occasion? A. He was talking about my Divine Comedy for two hours.

He give me some suggestions and his explanation, and he told me I am writing now myself script. It will be very good pictures. I will be finished in couple of days, so I give you—show you and you read it. And we—I think you can do these pictures, in my opinion, it will be very successful."

Mr. VanVoorhis: Line 8, page 67.

"Q. After you talked about the Divine Comedy and (1945) poetry and this kind of thing for several days, did you then get into talking about concessions? A. Then I started talking about Occidental.

"Q. What did you say? A. He started to smile. He told me I was waiting that you probably talk to me before. So I told him, no, I don't want to bother you. I know that you are bothered every day with everybody about the concession, but now when we—when we are through with our film, I promise him when I read the synopsis of his film, I told him I will do these pictures, and then he told me I have a group Italian who can do it, these pictures for you. So he give me the name in Rome, and then I was—after my staying in Libya—

"Q. No, let's stick to the conversations with Kabazi, oil and Occidental. A. So he told me, he told me, you know, Occidental is not very much in oil. It has many negative point. So I told him, listen, they people like Allen. He told me I check up and I don't see it any bank Allen. So I explained him what this investment bank, that is not bank where you going to cash money and so—so I told him these people, they can get any amount what they needed. So don't bother about that. But he told me yes, they not in oil. If they find oil, what will be done?

(1946) "So I told him don't worry about that, I can give you all guarantees that will be—that you can requiring in these field. You don't have any trouble to think they not in oil, they can't place oil, they can't sell oil. If I give you responsibility of Allen and Company, you can be ac-

quired in the whole field, you don't have to worry about anything that can negatively happen for you when you decided to give him these."

* * *

"Q. All right. How many days did you spend in Libya in December talking to Kabazi? A. Oh, it was—I was about a week there, six, seven days. And I come very often there.

"Q. I am talking about in December. A. Yes, December, about a week.

"Q. Did you report to Mr. Hammer about your visit to Libya? A. Yes. I told him I don't wanted to tell him—(1947) "Q. Give us the date, approximately. A. When I was back from Libya.

"Q. How many days were you back when you reported to him, approximately? A. Immediately when I come from Libya. I told him I have the good—have new contact and very, very good"—

Mr. Nizer: It says contract here.

"Who is that, who is that? Is that in palace? Is that in—you know, the royal—we have to find somebody in royal family, royal family. So I told him don't worry, now you can be sure that you will have your concession. Don't ask me who is it. I will not tell you who is it.

"Q. Did you tell him?

"This is your conversation with Dr. Hammer; is that correct? A. That is right.

"Q. Was that on the telephone? A. On the telephone.

"Q. Between October 1964 and July 1965 did Mr. Hammer have telephone conversations with you? A. Oh, we have many. I can't now specify to date. We have many telephone conversations.

(1948) "Q. Did he at any time during that period of time ask you to go to Libya? A. Many times, he ask me. Go

and see, I heard something here with the new government, will be that, I heard—I—go and see.

"Q. Did you go? A. Oh, yes. I was every time, many times.

"Q. After you went, between October 1964 and July 1965, did you report to Mr. Hammer? A. Yes."

Mr. VanVoorhis: Passing from line 18, page 70 to page 71, line 4.

"Q. Between October 1964 and July 1965, approximately how many trips did you make to Libya at Dr. Hammer's request? A. Dr. Hammer's request? Two or three, four.

"Q. Did Dr. Hammer request you to make the December trip to Libya? A. It was—I was contacted by Brenner, supposedly he was contacted by Dr Hammer.

"Q. Did you say that Mr. Brenner— A. Oh, yes, he contact me, Brenner. He told me that Brenner talk to Dr. Hammer and so and so, and let's go to Libya.

(1949) "Q. And that is the reason why you went to Libya; is that correct? A. That is right.

Mr. VanVoorhis: Passing from line 19 on page 71 to page 72, line 21:

"Q. Who introduced you to Khogia? A. DeRovin."

* * *

(Luncheon recess)

Ferdinand Galic, E.B.T.

(1950) Afternoon Session

2:40 P.M.

* * *

"Q. I show you Plaintiff's Exhibit 59 for identification" —P77—"and I ask you if you wrote the original of this to Mr. Hammer? A. Yes. That is my signature there.

"Q. Did you send it to him? A. Yes.

"Q. In the third paragraph you say, and I quote, 'In Libya our affairs seem to be doing well.' To what did that have reference? A. Where is that?

"Q. Right here, third paragraph. A. Oil. Concession.

"Q. An did that relate to your talks to Mr. Kabazi? A. That is right.

"Q. The next sentence you asked him to send you a letter which you must show Mr. Ogbi? A. Yes.

(1951) "Q. Do you remember what that letter was about? A. No.

"Q. Do you know whether Mr. Hammer ever sent you such a letter? A. I don't think so. I don't see what letter I was asking. I know I read it but I—

"Q. You don't remember it? A. No.

"Q. Okay. Now, I show you a letter which has been previously marked as Plaintiff's Exhibit 58 for identification and I ask you if you wrote this letter to Mr. Hammer? A. Yes. That is my signature."

Mr. Greenspoon: That, your Honor, is Plaintiff's 78 in evidence now; Plaintiffs 58 for identification.

"Q. In the second paragraph you say, and I quote, 'You suggested wiring or writing directly to the persons concerned once I sent you the names'. Do you see that? A. Yes, I see that.

"Q. When, in what conversation or in what letter did Dr. Hammer make such a suggestion? A. I think it was—

"Q. No, no, the question is did Mr. Hammer make that suggestion in a letter or in a telephone conversation?

(1952) A. Probably in telephone, but he told me always don't write, we telephone, call collect, we don't need to write.

"Q. But you still did send him a few letters? A. I sent him. But he ask me always to telephone. Normally I telephoned."

Mr. VanVoorhis: Passing from line 14 on page 17 to page 76, line 21.

"Q. Prior to March 5, 1965, had you been in Libya with Mr. Vaughan? A. Will you repeat?

"Q. Prior, before March 5, 1965— A. Oh, yes. Yes.

"Q. Can you tell us approximately when that visit was? A. We was twice together in Libya.

"Q. Mr. Vaughan testified that this visit took place in February of 1965. Does that refresh your recollection? A. February—can be February, but he write me the letter to—the 5th of March, it must be before. We stop in Paris."

Mr. Greenspoon: Your Honor, that is Plaintiff's 87, the March 5th letter.

"Q. We will get to that in a moment.

(1953) "On that trip to Libya with Mr. Vaughan, did you see Mr. Kabazi? You alone? A. I see him every day.

"Q. Did you bring Mr. Vaughan to any of your meetings with Mr. Kabazi? A. I never mention it to anyone.

"Q. No. Did you bring Mr. Vaughan? A. No, no.

"Q. In other words, you went alone? A. Alone.

"Q. Did Mr. Vaughan stop in Paris and have dinner at your house? A. Yes.

"Q. And was that some time before March 5, 1965? A. That is right."

Mr. VanVoorhis: Passing from there, which is the bottom of page 77, to page 81, line 22.

Ferdinand Galic, E.B.T.

"Q. I show you a letter which has previously been marked as Plaintiff's Exhibit 64 for identification, and I ask you if you sent that letter and the enclosure to Mr. Hammer?"

Mr. VanVoorhis: The number of that would be—

Mr. Greenspoon: That is Plaintiff's Exhibit 90, your Honor.

(1954) "A. Yes. I see my signature.

"Q. You mention in the second paragraph an oil conference in Geneva. Do you see that? A. Yes.

"Q. Whom did you wish Mr. Hammer to meet in Geneva at that time? A. Kabazi.

"Q. Did Mr. Hammer come to the oil conference to Geneva? A. No."

Mr. VanVoorhis: Passing from line 11, page 82 to page 85, line 4.

"Q. Now, Mr. Galic, I show you Defendant's Exhibit 24B, which is dated March 9, 1965, and ask you if you have ever seen a copy of that document before."

Mr. Greenspoon: I was going to tell your Honor that that is the DeRovin report attached to Plaintiff's Exhibit 97 in evidence.

* * *

(1955) "A. Yes. I have it—this copy in the office of Klehe.

"Q. Can you tell us when you saw a copy of Defendant's Exhibit 24B in the office of Klehe? A. Must be in this time probably. It was in this time, in March or—2nd, 3rd, 9th, 10th, I don't know, 15th—it was in March in 1965.

"Q. Was there any mention made—pardon me. Did you say you saw it in Klehe's office? A. Yes."

Mr. VanVoorhis: Line 16 on page 85 to top of page 86, line 1.

"Q. Did you call Dr. Hammer? A. I call him in the same day, walking out of the office.

"Q. Walking— A. When I walk out of the Klehe Company, I come in my office and I called Dr. Hammer.

"Q. On the same day you saw it? A. Same minute. I don't lose even five minutes. When I arrived in my office, I called the first call to Dr. Hammer.

(1956) "Q. What did you say to Dr. Hammer and what did he say to you in that conversation? A. I told him about what I see, the Klehe, they don't give me—I read it just at Klehe's. He told me he has no right to deliver me copy. I read it there two, three times, all these about DeRovin. And I told all right, and I walk out. I go in the office and I called Dr. Hammer.

"Q. What did you tell Dr. Hammer is the question. A. I told him, I see the day the information about the General DeRovin. He supposed to be crook. And we have to go—we have now to find a way to go out with this boy, not to mix any more with us. And then Hammer ask me what he done. So I told him approximately in generality what I readed. So he started to smile, 'All right, all right, all right, we see what we do.'

"So I told him we have to finance with him. We promise him something to give, what he introduce us to Ogbi. We have to have him out of the road.

'So, all right, leave it to me. We do that.'

"Q. Who said 'leave it to me'? A. Dr. Hammer."

Mr. VanVoorhis: Passing from line 7 on page 87—

The Court: Before you go ahead, let me see the (1957) Exhibit 97 again.

(Pause)

Mr. VanVoorhis: Passing now to page 89, line 12.

"Q. In this conversation did Mr. Hammer say that he would dismiss you? A. Not at all.

"Q. In this conversation, did Mr. Hammer say that he would dismiss Allen? A. Not at all."

Mr. VanVoorhis: Passing from line 17, page 89 to page 90, line 12.

"Q. By the way, in that telephone conversation with Mr. Hammer, did he say anything about doing anything to Ogbi? A. No."

Mr. VanVoorhis: Passing from line 15, page 90 to page 94, line 16.

"Q. Did you have a meeting, Mr. Galic, with Mr. Ogbi and Mr. Hammer in London in June of 1965? A. Yes."

Mr. VanVoorhis: Passing now to page 95, line 13.

"Q. Mr. Galic, did anyone ask you to go to the meeting (1958) in London in June of 1965? A. Yes.

"Q. Who asked you? A. Dr. Hammer.

"Q. Can you tell us approximately when you met in London in June of 1965? A. Date, I forgot. But I know it as in June 1965.

"Q. Do you know what hotel Dr. Hammer was stopping at in London at that time? A. Yes, he was at Claridges.

"Q. Was Mr. Ogbi also at Claridges? A. Yes.

"Q. And did Dr. Hammer tell you in the telephone—how did Dr. Hammer tell you or ask you to come to London? A. 'Galic, we have—'

"Q. Was it on the telephone? A. On the telephone, 'We have to see—'

"Q. What did he tell you? A. 'We have to see with Ogbi, you know, about this letter. It is a compromising letter what he write us. General DeRovin is very high appreciated in Libya—how he told me this letter. If you have this letter there, I tell you. Persona grata.

"Mr. Nizer: What is the witness—

Ferdinand Galic, E.B.T.

(1959) "Q. Are you looking now, Mr. Galic, at Defendant's Exhibit 4 for identification and a letter from Mr. Ogbi to Mr. Brenner, dated August 14, 1964?"

Mr. Greenspoon: That is Plaintiff's 28, your Honor. It is the letter from Ogbi to Occidental dated August 14, 1964.

* * *

"A. Yes.

"Q. Is that contained in a letter from Ogbi to Occidental, dated August 14, 1964? A. Yes.

"Q. Is that the letter to which Mr. Hammer referred? A. That is right.

"Q. Go ahead. What else did Mr. Hammer tell you? A. We have to see—I have to find—to exclude Ogbi now from—to working for us, but these letters have compromising for us, that he told—after, when we receive this report, DeRovin, so—and he Ogbi writes in the letter that he is very important man, and persona grata, that is very bad for us, and we—and I have to (1960) find a way to send Ogbi—to settle with Ogbi contract, and to take him out of the deal.

"Q. Did he tell you why he wanted you in London? A. Yes. To help me.

"Q. To help Dr. Hammer? A. Yes. Be there to help me. We see what we can do.

"Q. In this conversation, this telephone conversation before you went to London, did Mr. Hammer say anything about dismissing you? A. No. There was no question.

"Q. Did he say anything about dismissing Allen? A. Not at all.

"Q. Did he say anything about dismissing Allen? A. Not at all.

"Q. Did he say anything about being angry with you? A. No. Not at all. Contrary.

"Q. When you got to London, did you and Mr. Hammer and Ogbi have a conversation? A. We have a conversation in the apartment of Dr. Hammer for about 15 minutes.

"Q. When you say 'apartment,' do you mean his room in the Claridges or his suite in the Claridges? A. That is right, yes.

(1961) "Q. What was that conversation? A. And then he start to telling Mr. Ogbi, you know, you letter, what you write. And so—and when I see it, how he was talking to Ogbi, i see it already that something there what is not correct, or more or less, if you want to tell must be something crooked. But I don't object to anything. I listen to them.

After that he ask me—

"Q. No, no. You have to tell us what the conversation was. A. He told him, you know, about this letter here, what you write, 'Mr. Ogbi, you know, this letter what you write.' He answer 'Yes.'

"'You know, the report about DeRovin that here, he crook and so, and you told me the letter that he is persona grata in Libya, so we have to have him—I have to settle with you. I have—you don't have more to—you know, it will be compromising for us to have you continue on the deal for concession.

"Q. What did Ogbi say to that? A. He don't tell me very much. He started yes, I have writted this letter, what you want. And then Dr. Hammer ask me, 'Will you give us 15 minutes alone?'

"Mr. Nizer: Excuse me. 'Write this letter'?

(1962) "Mr. Greenspoon: 'Writted this letter,' to wit, the letter from Mr. Ogbi to Occidental, dated August 14, 1964.

"Mr. Nizer: Is that the one?

"The Witness: Yes.

"By Mr. Greenspoon:

"Q. You mean the letter in which he used the words 'persona grata'? A. That DeRovin was persona grata.

"Q. That DeRovin was persona grata; that is what you are talking about? A. Yes.

"Q. That Ogbi wrote to Occidental that DeRovin was persona grata? A. He showed what he has the letter, yes.

"Q. Then he asked you to leave the room for 15 minutes? A. That is right.

"Q. Did you leave the room? A. I leave the room. And then he call me back and he told me, we agreed, you know. You Ogbi don't have to do for moment nothing for us. If we need it, we will retalk Ogbi, and so forth.

"So he told to me, Hammer, I settled with him, (1963) and he will be not more in the deal. He will be not more officially occupied for the concession, Ogbi.

"Q. Who is 'he,' Ogbi? A. No. Dr. Hammer told me that Ogbi will not be more in the deal. Don't mix now, don't talk more. I settled that with him, so leave it on this point and that will be all right. He will be not—Ogbi will be not mixed in any more.

"Q. Did Mr. Hammer show you at that time any written agreements which he had made with Ogbi? A. No.

(1964) Mr. VanVoorhis: Passing from Line 18 on Page 100 to Page 101, Line 24:

"Q. At this meeting in London was there anything said by Mr. Hammer about dismissing Allen? A. No.

"Q. At this meeting in London, was there anything said about dismissing Mr. Galic? A. No, not at all. Contrary.

"Q. After this London meeting, did you and Mr. Hammer have a meeting in Rome with Mr. Khogia? A. Yes.

"Q. In the same month of June 1965? A. I think so.

"Q. Was there anyone present besides you, Mr. Hammer and Mr. Khogia? A. No. Just we three. I think it was another gentleman, but he left when we started talking.

"Q. Where did you have this meeting, in a hotel? A. Hilton Hotel in Rome.

"Q. Was Mr. Hammer staying at that hotel, do you know? A. Yes.

"Q. Were you stopping at that hotel? A. No, I was not."

(1965) Mr. VanVoorhis: Passing from Line 22, Page 102 to 103, Line 19.

"Q. I think we have gotten away from the conversation. What I am trying to find out is what you had Mr. Hammer and Mr. Khogia said to each other in the Hilton Hotel in June of 1965. A. Hammer was looking what he—how he can be helped by his brother-in-law. And so he give him call a different name, how you name Kabazi, how you name that, but never come to any realization of any kind of using Khogia, and me through Khogia anything. I was going always self.

"Q. Who made up this code? A. Dr. Hammer.

"Q. Do you remember any of the code names? A. No. About six or seven names, and concessions, how will be concession name? He must know better than I. He write.

"Q. By the way, was any of those code names the White family? A. I don't remember.

"Q. At this June meeting, did Mr. Hammer say anything about dismissing Allen & Company? A. Not at all.

(1966) "Q. Did Mr. Hammer say anything about dismissing Ferdinand Galic? A. Not at all."

* * *

"Q. Going back to October 1964, and right up to July 16, 1965, did you and Mr. Kabazi correspond with each other? A. Many times.

Ferdinand Galic, E.B.T.

"Q. What did you do with the letters which you received from Mr. Kabazi during that period of time? (1967) A. I destroyed everything. He done it also with mine.

"Q. Were any of the letters which you received from Mr. Kabazi written on Government stationery? A. No, it was on the—sample paper like that, or without any name or anything. Some time was not even—some time was not even signed, some time. Sometimes he had not even signed it.

"Q. Did any of those letters which he sent to you bear the designation 'Special file'? A. No. Private letters.

* * *

"Q. Mr. Galic, I show you a document which has previously been marked as Plaintiff's Exhibit K1 for identification and I ask you if you have ever seen this book or a copy of this book. (1968) A. Yes, I have heard of this book.

"Q. Have you ever seen it? A. Yes."

Mr. VanVoorhis: What was the corresponding number?

Mr. Nizer: 205.

Mr. VanVoorhis: Passing from Line 3 on 109 to Line 22 on the same page.

"Q. Did you show the book 'Money Money Money' to Mr. Kabazi? A. Yes.

"Q. Was anybody present when you showed it to him? A. I think no.

"Q. Did you show him any particular part of this book Money, Money Money? A. Just about the Allens, which is four or five pages.

"Q. Will you please look at Pages 180 to 195 and tell us whether or not those are the pages which you showed to Mr. Kabazi? A. Yes."

Mr. VanVoorhis: Passing from Line 10 on Page 110 to Line 21, same page.

"Q. What was said by Mr. Kabazi and by you with (1969) respect to Allen & Company and Money, Money, Money? A. He was very impressed about that."

Mr. Nizer: Move to strike that.

"Q. Is that what he said? A. Yes, he was very impressed about that, and he asked me if that book was issued by Allen or it was published by somebody other. So I told him it was not Allen, Allen they don't even have copy any more in the office. Was public book."

Mr. VanVoorhis: Passing from Line 7, Page 111, to Line 18 on the same page.

"Q. Did you show him which Allen was which? A. Yes."

Mr. VanVoorhis: Pardon me, I should have gone to Line 12.

"Q. Let's put it this way, did you and Mr. Kabazi look at the pictures? A. Yes. We was probably talking about pictures and the Allen, half hours.

"Q. Did you show him which Allen was which? A. Yes. I told him what is Charley and what is Herbert Allen.

"Q. Pointing to the pictures in the book? A. Yes.

(1970) "Q. Can you tell us approximately when it was that you showed Mr. Kabazi the book Money, Money, Money? A. It was one or two months after—one months or two months after that when was question about this banking business. But he told me 'I can no find Allen in any place like bank.'

"So I told—I explained to him—so I bring him the book.

"Q. After you got the telegram from Mr. Hammer, which has been previously marked as part of Defendant's Exhibit 13 for identification (P124) did you have a conversation with Mr. Allen?"

Mr. Nizer: I wish to add in addition to my prior objection that these questions are after the discharge letter and therefore not binding on the defendant in any theory.

Mr. VanVoorhis: P124 is the exhibit.

"A. Yes.

"Q. Which Mr. Allen? A. It was Charley.

"Q. Did you call him— A. Herbert was present also, I think.

"Q. Was it on the telephone or face— A. On the telephone."

* * *

(1971) "Q. Did you call Allen or did he call you? A. I called Allen.

"Q. And what did you say to Allen and what did he say to you? A. I told him that I received his telegram. What shall I do. He told me you have to continue it, don't worry about anything. Telegram is—anybody send to you telegram. So you have to continue it. You have to do it. That is my part—don't worry about Occidental. I will do it—I will—he will manage it with them. Don't worry, you have to continue it like up to now."

* * *

(1972) "Q. Continue what? A. Continue on the concession, to obtain concession.

"Q. Did you after you received the telegram meet with and talk to Mr. Kabazi? A. Oh, yes, many times.

"Q. Would you say that you talked to him 20 times from July '65 to, let's say, March of 1966? A. More.

"Q. And did you go to Libya after July 16? A. Yes.

"Q. And before February 20, 1966? A. Yes.

"Q. And did you see Kabazi on those visits? A. All time.

"Q. Did you talk to Kabazi on those visits? A. Yes. All time."

Mr. VanVoorhis: Now to Line 16 on that same page, 114.

"Q. Did you at any time between July 16, 1965, and let's say March 30, 1966, tell Mr. Kabazi about Mr. Hammer's telegram to you? A. No.
(1973) "Q. During that period of time, from July 1965 to March 30, 1966, did you tell Mr. Kabazi anything about Allen & Company receiving a letter from Mr. Hammer? A. Not at all."

* * *

"Q. Mr. Galic, I show you what has previously been marked as Defendant's Exhibit 8 (P141) for identification, and I ask you if you wrote that letter to Mr. Herbert Allen? A. Yes.

"Q. In the fifth paragraph, you say 'Yesterday the lawyers got in touch with me on account of Occidental Petroleum'. Who were those lawyers?"

Mr. Nizer: Read his original answer, please.

"A. That was Koegel & Rogers," and he changed his answer stating that his original answer was in error, to (1974) French lawyer."

* * *

"Q. Did you also have some French lawyers? A. He gave me to the—

"Q. No, first, did you also have some French lawyers? A. I have French lawyers and I discuss all matter with him. Then he called. But he have it in his department, the American lawyers. Then he called the American lawyers to come,"

Do you wish any further reading there, Mr. Nizer?

Mr. Nizer: Yes, would you read on, please.
Mr. VanVoorhis: Next page—pardon me.

"Q. First we got to limit it to the question. Did you have French lawyers in October 1965? (1975) A. Yes. I got first to him, the French lawyer.

"Q. How did you get to Rogers, Koegel? A. Through him.

"Q. Through your French lawyer? A. Through my lawyer in Paris.

"Q. What was his name? A. Michaud.

"Q. Did Allen & Company have anything to do with your employment of Michaud? A. No, he was my lawyer for ten years, 15 years.

"Q. Did Allen & Company have anything to do with your employment of Rogers, Koegel? A. That was a lawyer of Michaud. American lawyer of Michaud.

"Q. Did Rogers, Koegel have an office in the same building as Michaud? A. That is right, in the same floor."

* * *

"Q. I show you what purports to be a copy of a letter from Royall, Koegel & Rogers, to Occidental Petroleum Corporation, dated March 15, 1966, and I ask you (1976) if you received that document from Royall, Koegel & Rogers? A. Yes."

Mr. Greenspoon: Just one moment.
That, your Honor, is Plaintiff's Exhibit 164.

"Q. And I ask you if you received that document from Royall, Koegel & Rogers? A. Yes.

"Q. Do you know whether or not the original of that letter was sent to Occidental? A. Yes, they told me."

* * *

"Q. Now, Mr. Galic, looking at Defendant's Exhibit 8 for identification—"

The Court: I remember the letter. Go ahead.

"Q. —the last paragraph on the first page starts off with these words, 'I blocked the way, but if you consider it more interesting that they obtain the concessions, I will go to Libya and manage that way. Do you see those words? A. Yes.

(1977) "Q. Had you on or about October 13, 1965, done anyt'ing at all to block the way to the concessions? A. No, I don't block.

"Q. You have answered the question. Mr. Nizer doesn't want speeches. He just wanted single words.

"Now, after October 13, 1965, did you do anything at all to block the way to the concessions? A. No.

"Q. At the time you wrote this letter on October 13, 1965, did you have any plan as to how you could block the concessions? A. Yes."

Mr. Nizer: I object to all of this, of course.

The Court: Well, there is a great deal of that in the case already, so we will take it.

"Q. What was that plan? A. If Allen told me that I don't have more to do anything for Occidental, for me was no difficulty to block—it was a shame, it was not difficult to block—

"Q. But what were you going to do? A. Talk to Kabazi, and I told him—then I have to tell him, here is counsel, he contracted with me and with Allen. Now Allen has no—he don't give more guarantee, financial for the operation, and you just forget. (1978) You have to leave me the Occidental how you have the first information. The first information what you have it about Occidental was very bad."

The Court: Really, gentlemen, this is a projection of what he might have done, as I understand the question that was put to him.

Mr. Nizer: That is right.

Mr. VanVoorhis: That is right.

The Court: Which he denies that he did. Why are we reading that into the record?

Mr. VanVoorhis: We only read it—

The Court: I am simply emphasizing what is going in, obviously we will pay no attention to it unless counsel think I should.

Mr. Greenspoon: No.

Mr. VanVoorhis: The only reason for reading it in, your Honor, was Mr. Nizer wanted us to read in "I blocked the way" and this perhaps sheds a little light on the remark. If you want it struck out, we have no objection.

The Court: Mr. Nizer was referring to the statement in the letter at the end of the first page, I believe, in which he said "I blocked the way."

(1979) Now, this was a question, what did he have in mind, what could he have done. Well, it is in there. Let's not spend time on it.

"Q. Did you tell Kabazi at any time that Allen was withdrawing and wouldn't finance? A. No.

"Q. All right. A. Never.

"Q. After you wrote this letter to Herbert Allen, did you receive a phone call from either Charles Allen or Herbert Allen in connection with Defendant's Exhibit S (P141) for identification? A. Repeat slowly. If I have a telephone call or what?

"Q. Did you have a telephone call from either of the Allens after you wrote— A. Yes.

"Q. What did they say concerning— A. Continue it."

Mr. Nizer: General objection, if your Honor please.

"A. Continue it and forget it. Don't occupy you about Occidental. You have to do with your concession, we do the rest.

(1980) "Q. You were to continue working on the concession? A. I have to continue on the concession, and our work we doing by ourself. Don't worry and go on.

"Q. And did you thereafter continue to work on the—for the concession? A. Oh, yes.

"Q. I show you what purports to be a telegram from you to Mr. Charles Allen dated March 15, 1966, which has previously been marked as Defendant's Exhibit 10 (P163) for identification, and I ask you if you sent that telegram to Allen."

Mr. Greenspoon: That is Plaintiff's Exhibit 163, your Honor.

"A. Yes.

"Q. You did? A. Yes.

"Q. In the very last line it says, and I quote 'Letter follows.' Did you send any such letter? A. If—probably, if we have a telephone conversation, then I don't send it."

Mr. VanVoorhis: Page 124, Line 1.

"Q. Did you have a telephone conversation about that telegram? (1981) A. Oh, yes, we have it.

"Q. With whom did you have it? A. Charley."

Mr. VanVoorhis: Passing from Line 5, to Line 24 on Page 124.

"Q. After Royall, Koegel & Rogers sent Plaintiff's Exhibit G22 (P164) or the original of it to Occidental, did Mr. Hammer get in touch with you? A. No, I don't think so. That was later on.

"Q. After that letter was written? A. It was after concession, I think. Yes. He asks me to—

"Q. He did what? A. He asked me to let's go, settle down."

Mr. VanVoorhis: Passing from Line 11 on the page, which is 125 to Page 127, Line 18.

"Q. After March 15, 1966, did Mr. Hammer get in touch with you? A. Yes.

"Q. And what did he say to you in that conversation if it was in that telephone conversation—if it was a telephone conversation."

Mr. Nizer: Your Honor, in addition to my other objection, this goes to the settlement discussion.

(1982) The Court: I understand that.

Mr. Nizer: All right, thank you.

"A. No answer.

"Q. What did Mr. Hammer say to you in this telephone conversation? A. Let's go settle this deal, and we work out something other, let's go settle this deal.

"Q. Did you thereafter have a meeting in the United States with Mr. Hammer? A. Yes, I have a meeting with him.

"Q. So now you had a visit to the United States, you say, to meet Mr. Hammer? A. Yes, I go to Los Angeles."

(1983) Mr. VanVoorhis: Passing from line 22, page 128 to page 130, line 10.

"Q. By the way, can you tell us approximately when you had that meeting in Los Angeles with Mr. Hammer? A. July, June, July.

"Q. June or July? A. Yes.

"Q. Of 1966? A. That is right.

"Q. After that meeting, with Mr. Hammer, in Los Angeles, did you receive a telephone call from Mr. Charles Allen on the subject? A. Yes.

"Q. Just tell us yes. A. Yes.

"Q. Will you tell us what Mr. Charles Allen said in that conversation?"

Mr. Nizer: I objected to that.

The Court: Really, gentlemen, can it possibly be evidentiary?

Mr. Greenspoon: Yes, your Honor.

The Court: Tell me on what theory.

Mr. Greenspoon: This, your Honor, is when Dr. Hammer was present. That's the point of this (1984) conversation.

The Court: Well, there is still the objection that this is settlement discussion. We'll take it.

"Q. You may go ahead, Mr. Galic. A. He told me that I am calling you, Dr. Hammer is present here and Herbert is present here, and Dr. Hammer"—

The Court: I just wanted to make sure—off the record.

(Discussion off the record.)

"Q. You may go ahead, Mr. Galic. A. He told me that I am calling you, Dr. Hammer is present here and Herbert is present here, and Dr. Hammer is—told him that he has difficulty to develop Libyan deal. That you have to put on—has to take me out from his back, or something. He told me. Dr. Hammer told him, Charley you have to take Galic from my back.

"And so he told me, et cetera. So I told him, listen Charley, I done it, everything. I done it after—when he sent telegram and everything, now you want me to settle with him.

"So I told him no. And he told me please settle—make me, and then I give you interest of my part. So I told him no. I have a 4 per cent bruto to have the production (1985) of oil, and you have participation. So

don't worry I give you part. So I told him no, I don't want the parts. I don't have—first thing, if I have—if I participate in—no, I finance for you everything you don't have. So I told you no, Charley, for some parts of the participation, I don't want to go in the settlement. So I give you half of mine. So I told him, yes, I finance everything for you."

* * *

"So I told him, yes, I finance everything for you. So I don't have to give any money for drilling and for the oil, pipe or something.

"No, you don't have anything. I do everything. (1986) So I told him all right, I—then I try to settle with Hammer. He told me all right, Ferdo, Hammer call you after tomorrow. I don't know.

"Q. Let's get a few explanations. The word bruto is that b-r-u-t-o? A. Yes.

"Q. Can you tell us what the word—that is an Italian word? A. Bruto is—no, is French, is Italian. That mean, if you have a hundred thousand barrels a day, I have 4 per cent of that, that mean I have a four thousand barrels for me.

"Q. That is an override? A. That is right. Override.

"Q. In this conversation, did Mr. Allen mention what his participation was in the venture? A. Yes. I know it.

"Q. Did he say it? A. Yes, I know it.

"Q. Did he say it? A. Yes, I have twenty-five and you will have half of twenty-five."

Mr. VanVoorhis: Passing from—

Mr. Nizer: Please don't pass. Will you read the (1987) rest of the page?

"Q. Did he mention—

Ferdinand Galic, E.B.T.

"Mr. Nizer: I object to that and move to strike it out.

"Q. Did he mention what you would have half of what, profits or what? A. Half of his parts of twenty-five per cent.

"Q. Of the profit? A. Profit. He was participating on the 25 losing and I have it just on the profit. He told me that he will finance everything and he is doing all financing, and you have the 50 per cent of my parts.

"Q. Or profit? A. Profit parts."

Mr. Nizer: To line 9, please.

"Q. In other words, let me get it straight, Mr. Allen said you would not participate in any losses? A. No, losses were not mine.

"Q. That you would get half of his profit? A. Exactly.

"Q. And you finally said okay? A. Yes. I told him all right, I do my best."

Mr. VanVoorhis: Is that sufficient, sir, or do you want more?

(1988) The Court: Can we go off the record again?

(Discussion off the record.)

Mr. VanVoorhis: I think we should go on.

"Q. And thereafter did Mr. Hammer get in touch with you? A. Yes. When we—

"Q. And did you come to New York? A. Then I come to New York.

"Q. All right. Now, tell us what was said in the conversation in New York with Mr. Hammer and tell us who was present? A. I wanted—before I left for New York I wanted to have conversation on the telephone. He told me no, no, you will be very satisfied. Come on over, come to New York and we do it here.

"Q. All right. A. So I arrive in New York and I was in his office—

"Q. In whose office? A. In Dr. Hammer's office. He have it already—

"Q. Go ahead. A. And he had already all papers prepared by his lawyers.

"Q. Is that what he told you? A. Yes. And I prepared for you check here Galic for $100,000 and a hundred thousand in five years, each year $20,000. So I told him Hammer, no, I want half a million (1989) dollars.

"Q. Go on from there. A. So he started, Ferdo, I advise you like on a friendly basis, take this two hundred thousand dollars, probably I will not have any—probably I will not find any oil. And you will see the Occidental will lose money, and you already making money.

"So I told him, Hammer, no, I done it too much that you have a concession. And then we was discussing a couple of things."

Mr. VanVoorhis: Page 138, omitting the colloquy.

"Q. Tell us everything that you can remember which was said on that occasion by Mr. Hammer and by you other than what you have already told us. A. I give him many details of the deal, and his conversation, the people who he contacted, with whom he was taking information and so, and he was surprised he told me, he never know that you know that all about. I told him I know the every movement was done from your side.

"And it was the only possibility to come to the positive result who you arriving now through my friend Kabazi, so Hammer started to smile. But he was the only man who has to decide it. He is the only man who is signing the contract. He is the only man who has to fight for (1990) somebody to have a concession.

"So he told me Galic, you have it already, you will have something from Allen and take this $200,000, probably be no oil there, and I have information there will be not oil, so better take that and we can work some other deal if you want to be public relation for Occidental Petroleum. I will like you, like public relations, you know many people downtown—so I told him Hammer, no, I don't want to be in anything. I never work for anybody. And then he give me papers to sign it for a $100,000 and $100,000, and I work out from there."

Mr. VanVoorhis: I think we will pass to 139, line 5.

"Q. Mr. Galic, I show you this document which has previously been marked Plaintiff's Exhibit 46 for identification, and ask you if your signature appears thereon."

Mr. Greenspoon: That, I believe, is 185, Plaintiff's 185.

"Q. Did you or your lawyer draft Plaintiff's Exhibit 46? P185. A. No. It was already prepared and finished—

"Q. Can you tell us what the date is on Plaintiff's Exhibit 46" P185 "for identification? A. 27/8, I think. (1991) "Q. Does that mean 27 August? A. Yes.

"Q. 1967? A. Yes.

"Q. Now, I show you Plaintiff's Exhibit 46A for identification and ask you if your signature appears thereon. A. Yes.

"Q. Can you tell us the date? A. The same date, the same date like mine.

"Q. August 27, 1966? A. Yes.

"Q. This document—

"Plaintiff's Exhibit 46A" P186 "for identification, relates to a discharge of Ogbi Brothers. Do you see that? A. Yes.

Ferdinand Galic, E.B.T.

"Q. Who suggested that you sign this release, Plaintiff's Exhibit 46A?"

Mr. Greenspoon: That's P186 for identification.

"A. He asked me.

"Q. Who asked you? A. Dr. Hammer.

"Q. Did he tell you why? A. No, he don't tell me why. I suppose it was—

"Q. You cannot suppose. If he did not tell you—(1992) A. He don't tell me.

"Q. Mr. Galic, was there any talk about expense moneys at this meeting? A. Yes.

"Q. What did you say to Mr. Hammer and what did he say to you about expense moneys? A. I told him 'For all my trips I done it for you, and you are calling me many times to go to Libya and to go there, and my expenses is about $18,000.'

"But I was wrong. It was much more. That was too late. I done the agreement. So he told me 'All right, Galic, I pay you all your expenses. How much, $18,000?' He give me a check.

"Q. Maybe it was $16,000? A. Or $16,000. I don't remember.

"Q. I show you Plaintiff's— A. $16,000."

The Court: Off the record.

(Discussion off the record.)

Mr. VanVoorhis: I think we better continue from there in sequence, on the bottom of page 141.

"Q. I show you Plaintiff's Exhibit 45 for identification"—

Mr. Greenspoon: That's now Plaintiff's 183.

(1993) "and ask you if your signature appears thereon. A. Yes.

Ferdinand Galic, E.B.T.

"Q. Did you or your lawyer draft Plaintiff's Exhibit 45 for identification?" P183. "A. No.

"Q. Do you know who drafted Plaintiff's Exhibit 45 that his lawyer prepared everything.

"Q. The lawyer of—he told me, Dr. Hammer told me that his lawyer prepared everything.

"Q. By the way, I show you this document and I ask you if that is a copy of a document given to you by Mr. Hammer. A. Yes. That is a check from Dr. Hammer.

"Q. Will you read what these words are? A. 'Reimbursement for expenses.'

* * *

(1994) "Q. Now, Mr. Galic, I show you a document which has previously been marked as Plaintiff's Exhibit 7 for identification, dated September 18, 1964, and paragraph 2 thereof, which reads as follows:"

Mr. Greenspoon: That is P38.

"'These oil and gas concessions will be either No. 32 or No. 59 and one additional concession from any other area at Occidental's option.'

"Do you see those words? A. Yes.

"Q. Who mentioned the numbers 32 and 59 in London? A. Dr. Hammer."

Mr. VanVoorhis: Going to page 145, line 8.

"Q. I show you a document which was marked Plaintiff's Exhibit K-2 for identification on the deposition of Mr. Kabazi, and I ask you if you have ever seen that document before? A. Oh, yes."

Mr. VanVoorhis: That is number—
Mr. Nizer: 159 or 158.

"Q. Can you tell us approximately when you received this document which has now been marked as Plaintiff's

Exhibit K12 for identification? A. About two days later taken from the date. (1995) About 18—

"Q. 18th of what? A. 18th of the same month. 18th of February.

"Q. 1966? A. Six.

"Q. After July 16, 1965, and right up to, let's say, March of 1966, did you continue to correspond with Mr. Kabazi? A. All time, very close connection.

"Q. Other than Plaintiff's Exhibit K-2 for identification, were any of those letters written on the stationery of the Kingdom of Libya? A. No. That was the first one.

"Q. Other than Plaintiff's Exhibit K-2 for identification—

—were any of those letters marked 'Special File'? A. Never.

"Q. In the fall of 1965, and early in 1966, did you have any talks with Mr. Kabazi about the High Council?"

Mr. Nizer: I have a continuing objection to this hearsay.

Mr. VanVoorhis: Passing from page 146, line 16, to page 157, line 17.

(1996) "Q. I don't know whether I asked you this, but in those conversations which you had with Mr. Kabazi, in late 1965 or early 1966, was there any mention made of Allen & Co.? A. Oh, yes."

* * *

"Q. Now, what was said in that conversation about Allen & Co.? A. He asked me, is Allen behind? So I told him yes. He have it in the Consul also that he told that Allen & Co. is behind him. And he know it about Allen & Co. He see the book—"

Mr. VanVoorhis: Passing from there to 159, lines 10 and 11.

"Q. Is that what was said in this conversation? A. Yes."

Mr. VanVoorhis: From there, passing to page (1997) 186, top of the page, line 2.

"Q. Mr. Galic, who paid your expenses for the London trip in September, 1964? A. Myself.

"Q. I believe you mentioned a trip to Rome with Mr. Hammer at which you met Mr. Khogia in June, 1965, do you recall that? A. Yes.

"Q. Who paid your expenses for that trip? A. Myself.

"Q. I believe you mentioned that you made various trips to Libya over the period of time.

"Can you tell us who paid for your trips to Libya? A. Everything was paid by myself.

"Q. Did Mr. Hammer give you his telephone numbers? A. He give me two or three telephone numbers. Los Angeles, here, office here in Connecticut.

"Q. Was that in Greenwich, Connecticut? A. That is right.

"Q. How did you call him, collect or how? A. Collect call.

"Q. Did he tell you to call him collect? A. Yes, he told me."

(1998) Mr. VanVoorhis: Passing from line 9 on page 187 to page 190, line 20.

"Q. Did you at any time assist Wintershal in obtaining oil concessions in Libya? A. No. They don't need me.

"Q. Did you at any time assist any German Company to get concessions in Libya? A. No. That is—

"Q. Mr. Nizer doesn't want you to go on. A. All right."

• • •

Ferdinand Galic, E.B.T.

"Q. Did you at any time speak to Mr. Kabazi about giving concessions to Wintershal? (1999) A. No."

(2000) New York, New York
October 1, 1973—10:00 A. M.

* * *

"Q. Did Allen & Company ever tell you that they wanted any German Company to get concessions in Libya? A. Not at all. I never discussed any company, just Occidental, with Allen.

"Q. Can you tell me approximately how many trips you made to Libya between October 1964, and let us say, March 31, 1966? A. About 20 times.

"Q. 20 trips? A. Between 15 and 20 trips.

(2001) "Q. On each of those trips did you see or talk to Mr. Kabazi? A. After second, third time I started to be with Kabazi involved. And then I see him continually.

"Q. Can you tell us at what places in Libya you saw Mr. Kabazi? A. Always in his place. Just once he take me outside to the country, driving three-quarter hours. Otherwise, I was always in his home. Khogia bring me always in the night.

"Q. To where? A. To his home.

"Q. Did you ever meet him at the Uaddam Hotel? A. I think once I met him there. I meet him there.

"Q. And I believe you mentioned earlier that the first meeting was at his office, is that correct? A. First time I was in the office, yes."

Mr. VanVoorhis: Passing from Line 10 on Page 193 to Page 196, Line 23.

"Q. So I will repeat the question. At the London 1964 meeting in September, did Mr. Hammer ask you to work on any application which Occidental might file for (2002) concession. A. He asked me to work on the concession.

"Q. No, no, did he ask you— A. For application, no. That he would do in his office alone by himself, I suppose.

"Q. At the September meeting in London, to your knowledge, did Mr. Hammer ask General DeRovin to work on the draft of any application which might be filed for concession? A. No.

"Q. At that same meeting did Mr. Hammer ask Mr. Ogbi to work on the drafting of any application for concession? A. No.

"Q. At that meeting in London was there any mention made of Mr. Vaughan? A. No.

"Q. Do you know who typed or drafted the agreement between you and Mr. Hammer signed on September 18, 1964? A. Brenner in his apartment, in Dr. Hammer's apartment.

"Q. Mr. Brenner? A. Yes.

"Q. At that time in London, were you shown a copy (2003) of the agreements between Mr. Ogbi and Occidental and between Mr. DeRovin and Occidental? A. Yes.

"Q. Did you do any translating for the benefit of either Mr. Ogbi or Mr. DeRovin? A. Yes.

"Q. Of those agreements? A. Yes. That is right.

"Q. Have you ever seen the bid submission which Occidental filed in July of 1965? A. No."

Passing from Line 14, Page 198, going to Page 205, Line 19:

"Q. Mr. Galic, I show you this document dated Tripoli, 16-2-66 and I ask you what is that document? A. That is a letter what I received from Kabazi.

"Q. Is that the original? A. That is the original."

Mr. Nizer: Would you be good enough to read—

"Mr. Greenspoon: Would you please mark as Plaintiff's Exhibit G30 for identification the orig-

inal of the letter from Fuad Kabazi to Ferdinand Galic, dated Tripoli 16-2-66."

Whereupon the record of the EBT shows that it
(2004) was marked in the EBT as Exhibit G30 for identification.

Mr. Nizer: Would you be good enough to read my request at that point. I think it has relevance in the light of the *voir dire*.

Mr. Lewis: It is P158.

Mr. VanVoorhis: It doesn't seem to me that it has, sir.

Mr. Nizer: Pardon?

Mr. VanVoorhis: I say if we are going into this matter of your demand for possession of the letter, we have to go through the whole series of events beginning with the order naming Mr. Herring, and on through the proceedings before Judge Cooper.

Mr. Nizer: That follows.

Mr. VanVoorhis: The whole story. If we are going to go into that we have to go into the whole of it.

Mr. Nizer: That follows.

Mr. VanVoorhis: It does not seem to me that that is all-essential. I have no objection so far as the background of the letter is concerned, but it seems to me that it will take an inordinate amount of time and I suggest it isn't necessary. If we begin it, we have got to go through with the whole story.

(2005) Mr. Nizer: Well, the subsequent developments in which the Court appointed an expert of course is pertinent on the *voir dire* and this is the beginning of that. I think it does have to be gone into. His Honor has permitted the *voir dire*.

Mr. Greenspoon: Nobody offered it.

Mr. VanVoorhis: It was not offered.

Mr. Nizer: Yes.

Mr. Greenspoon: No.

Mr. VanVoorhis: So far as the Court-appointed expert is concerned, that term is unclear, because the plaintiff has not questioned the authenticity or validity of this document. It was questioned by the defendant. And there were certain markings on the letter which the plaintiff wanted to be sure to preserve, which it was definitely in the interest of the plaintiff to preserve, and so there was a question which arose over its possession.

The Court, at Mr. Nizer's instance, wanted an expert in an attempt to challenge the validity of this document, appointed a Mr. Herring, and he had possession of this letter for something like six months for examination. He came up with a report which in no way impugned the validity or authenticity of the document itself, raised some questions about whether a carbon copy was made.
(2006) And then not satisfied with that, further applications were made by the defendant for further examinations of the document by another or other persons.

In that connection I believe it should be said that Mr. Herring, I think, suffered a severe automobile accident and was perhaps unable to continue the examination of it himself, but at any rate we have had a whole series of experts, here whose names have been presented to the Court as prospective witnesses with respect to a challenge of this.

And when it came to a demand for examination of the letter by the most recent selected expert, Mr. Hilton, the plaintiff objected to its being turned over to Mr. Hilton's possession. He was not selected by the Court, and for the reason that

there were certain markings upon the back of the paper indicative of the fact that a carbon was made which could easily be erased or eliminated and which would, according to affidavits by our experts, would be in danger if subjected to the particular kind of tests, particularly chemical tests, to which it was proposed to subject this.

Now, there is a long series here. We have a volume of papers—my eye can't measure them precisely, (2007) but I should think about an inch and a half thick over this application before Judge Cooper. Judge Cooper resolved it, and it was turned over, examined by Mr. Hilton under restricted conditions, and if it is necessary to go through with all of this history, we are perfectly willing to do it, but I suggest that it is perhaps an unnecessary interruption of the progress of this deposition, and that it is hardly necessary.

We have no reluctance to go into it, if it be your Honor's desire.

Mr. Nizer: Your Honor, I don't think this is the time to argue a matter which would be pertinent on the *voir dire*, as I understand it, but to this limited extent, I wish to advise your Honor that we don't agree with the learned Judge's statement. The Herring report, Mr. Herring having been designated by the Court, is certainly in evidence now. He filed it. It was they who were dissatisfied with it. We were ready to rest on it. They retained Mr. and Mrs. Teitel, two experts. That resulted in cross examination of them and further procedures.

We don't agree with the statement which was made, but this is not the time to argue it. All that is before your Honor at this time, as I conceive it, is that (2008) at the point that this letter, the

there were certain markings upon the back of the paper indicative of the fact that a carbon was made which could easily be erased or eliminated and which would, according to affidavits by our experts, would be in danger if subjected to the particular kind of tests, particularly chemical tests, to which it was proposed to subject this.

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nothing on the back of the ribbon copy of this letter to show that there was a carbon copy made.

He didn't even go so far as to say that he had proved that there was no. They were brought into it on that aspect, and there were various markings on the back of it which our experts indicated were indicative of the making of a carbon, and that precipitated this long series of proceedings before Judge Cooper.

Now, when we come to this matter late, it was not until after the plaintiff had opened before your Honor that anything resembling a report by the defendant's latest expert, Mr. Hilton, was delivered to us, notwithstanding that in your Honor's chambers on the 26th of April, the defendant was directed to furnish the plaintiff with a copy of such a report as soon as it was developed.

(2010) This is quite a long story, and I suggest that although it may be necessary to develop it at some time, that this is an inappropriate interruption of the reading of the testimony by Mr. Galic in his EBT.

The Court: If there is a question of when it is to be read, it seems to me, picking up your language, it is a pretty long story, whatever is to be read, I think could have been read in half the time you gentlemen have exchanged in this colloquy. The Court has heard so much. Why don't we read it now and move on. I really don't know what it is and I don't know its relevance and I am even wondering what the statements of counsel have to do so far as the basic issue is concerned with respect to the authenticity of a letter. If counsel would feel better putting it in, let's put it in and move on.

Mr. VanVoorhis: Then we respectfully reserve the right to supplement this.

The Court: You may do so, whatever you think is required to supplement the statement made to me.

Mr. VanVoorhis: Do you want me to read it?

Mr. Nizer: As you wish. Do you want me to? You are reading.

Mr. VanVoorhis: I will read it if you like.

(2011) "Mr. Nizer: I respectfully renew my request that this document be entrusted to us for two or three days at the most, upon my undertaking and assurance that it will be returned in precisely the same form and guarded very carefully, so that I may have an opportunity to make certain—take certain steps with respect to authenticity of it.

"I call attention again on the record to the fact that I have granted the only request made by the plaintiff to have a document for several days, and I have some other requests for purposes of photostating, permitting originals to be out of my possession on the same undertaking of trust it will not be missing.

"And I may further say that if there is any paper in our file which the plaintiff wishes to have for any purpose, either for photostating or otherwise, they are welcome to have it. We will not raise any technical objection to it. But I have been asking you for this document a long time, and now that it is finally produced as an original, I renew my request."

How far do you want this to be read?

* * *

(2012) "Q. Now, Mr. Galic, shortly before you received Exhibit G-30, did you have a conversation with Mr. Kabazi? A. What is G-30?

"Q. This is G-30, the original of the letter dated— A. Yes, I have it.

"Q. Who called whom? A. He called me. Kabazi called me.

"Q. Can you tell us approximately how long before you received G-30 this conversation took place? A. It was about 10 days, 12 days before I received the letter."

Passing to the top of page 217, line 2—

Mr. Nizer: I am objecting to that conversation, (2013) but if his Honor overrules me, then I want the whole conversation, which begins at the bottom of 216.

I object to the conversation, your Honor, between Kabazi and—

The Court: It is hearsay, but I will take it anyway. I don't know why we are spending time on it. It comes within the same category, at least as far as you contend, as the letter itself, isn't that correct?

Mr. Nizer: Yes, your Honor.

Mr. VanVoorhis: If Mr. Nizer wishes, I will continue reading, line 20, page 216:

"Q. Will you tell us what Mr. Kabazi said to you and what you said to him in this conversation?

"Mr. Nizer: I object to this. It is incompetent, irrelevant and immaterial and not binding upon the defendant.

"A. He was desperate—

"Q. No, what did he say. A. Yes. He told me 'Galic, I can no give anything more than 44 to Occidental, but I have all people against me. And the German, they too strong. We have it from the German Government also push that they would stop to take Libyan oil if you don't give complete satisfaction to them.'

"So I told him, 'You must have the first thing 44 is not concession what Occidental wanted. Secondly, you (2014) have to give me 42.'

"He told me, 'I cannot give you 42. Is split in two. Beach one is like separate concession.'

"So I told him, 'All right, you have to do 42A or 42B.'

He told me, 'If I don't succeeded with my council of minister to get that, I will go and see the head. And I do my best and just leave to me.'"

* * *

(2015) "Q. Search for all the correspondence, cables in connection with this letter, that this letter refers to? A. Yes."—

The Court: What letter were you referring to there?

Mr. VanVoorhis: I think it is G-1, which is the copy—

Mr. Greenspoon: It is a letter you had written to me. Mr. Pollio had written a letter to me asking for something or other and—

Mr. VanVoorhis: This is not the Kabazi letter.

(2016) The Court: Go ahead.

Mr. Nizer:

"A. Yes. Letter what I have of it, I deliver it before to Pollack. Everything, Allen Company, and what—in Occidental Petroleum. The others, I don't have it—with Khogia, I don't keep it any letter, but more or less privately. With Kabazi, I destroy every letter when I receive it. And it was the letter, some time, even not signed. Some time just on the white paper and we understand each other are on the basis of we was corresponding with each other, so I never keep any letter from Kabazi. And Kabazi never keep any letter from me, also."

I skip to page 245, line 19.

Mr. VanVoorhis: We don't object to that.

Mr. Nizer:

"Q. Did you ever have a file for Kabazi? A. No. I write always by hand, even not secretary. And it was sometime in French, more or less in French writing.

"Q. His letters that came to you from Kabazi to you, did you ever file those? A. No. The same moment I read it, I destroyed it."

I skip to the bottom of that page, same page, line 22—

Mr. VanVoorhis: I don't think it was offered, but we don't press the point.

(2017) Mr. Nizer:

"Q. You have told us about the Kabazi documents being destroyed. You have also told us that you— A. No documents.

"Q. Letters?"

Well, there is no answer to that.

I skip to 253, line 17—

Mr. VanVoorhis: Wait a minute. Just a moment.

(Pause.)

Mr. VanVoorhis: No objection.

Mr. Nizer:

"Q. How soon after you got a letter from Kabazi did you destroy it? A. The same moment when I read it, I destroy it.

"Q. How did you destroy it, burn it, tear it up, what did you do? A. Yes.

"Q. Tear it up? A. Yes.

"Q. And throw it in the wastepaper basket? A. That is right.

"Q. Did he tell you that he was doing the same? A. Yes.

"Q. Did you ever discuss why you were going to destroy each other's correspondence? (2018) A. It is nobody business what—just for us two.

"Q. Were you writing to him as the Minister of Petrolleum? A. No. I write to him like Kabazi, privately.

"Q. But in connection with his duties as Minister? A. Yes. To help Occidental.

"Q. My question is, when you wrote to him as Kabazi, you were writing to him, addressing him as Fuad Kabazi, but in connection with his responsibilities as Minister of

"Q. Were you writing to him as the Minister of Petro-Petroleum of Libya, weren't you? A. Yes.

"Q. And when he was writing to you, how did he address you? A. By name. The address in Paris, that is all.

"Q. And how did he address it, how did he call you? A. Dear Ferdo.

"Q. Dear Fellow? A. Dear Ferdo or Fernando.

"Q. When, for the first time, did he and you discuss the fact that both of you could destroy the correspondence between you? A. The first time when I see him, I told him 'It is better if you destroy it.' He told me, 'I don't it already.' It was not even need to tell him."

(2019) Go to page 256, the next page, line 17—

Mr. Greenspoon: No, no, not if you are going to start on line 17.

Mr. Nizer: What would you like me to read?

Mr. VanVoorhis: The last line on the previous page, perhaps, 255, line 24.

Mr. Nizer: Then I will continue reading from where I left off. I would like to read it all, if I have to read it.

This is line 10, page 255.

"Q. You were writing to him, I think you told us, as a representative of Occidental on official business of Occidental; is that right? A. That is right.

"Q. And he was writing to you, whatever answers he gave you, as Minister of Petroleum, giving you whatever information you say he gave you in connection with that official business; is that correct?

"Is that correct? A. Yes.

"Q. When you wrote to Mr. Kabazi, where did you address your letters to him? A. To his post office box.

"Q. Can you tell us"—

(2020) Here I am reading from what you wanted me to read:

"Q. Can you tell us what that is? Do you know it? A. If I have it here, I give it. No, I give it to him.

"Q. Where do you address them today? A. Also, the same.

"Q. The post office box is where, where is that? A. In Tripoli.

"Q. Where is it in Tripoli, is it in the building of the Ministry? A. The post office boxes is not in the building of Ministry. It is in the post.

"Q. In the post office? A. Yes."

Now I read what I was going to read:

"Q. And that was also a secret way of getting the letter to him, is that right? A. That is right."

Mr. Greenspoon: Please continue.

Mr. Nizer:

"Q. And did [illegible]er tell you not to write to him at the Ministry? A. No. By myself I address it—he give me by himself the post box."

Do you want me to continue reading? I was going (2020a) to skip to page 261, unless you want me to read it.

Page 261, line 12—

Mr. Greenspoon: I think you have to start with the preceding question, to make 2 sensible.

Mr. Nizer: Beginning with line 9?

Mr. Greenspoon: Yes.

(2021) Mr. Nizer: 261, Line 12, reading.

Mr. Greenspoon: There is a preceding question.

Mr. Nizer: You want me to read the one beginning with Line 9?

Mr. Greenspoon: Yes.

Mr. Nizer: Very well, I read one question and answer before my proposed reading. On Page 261, your Honor.

"Q. The only letter that you say was preserved was the letter marked as an original today, Plaintiff's Exhibit G30 (P159)? That is the only one that was preserved? A. That is right.

"Q. Of all the dozens of letters through the years, the only one preserved was G30 (P159), that is correct? A. That is correct.

"Q. And this letter was not in code, was it? A. That was letter—

"Q. No. Was this letter in code? A. No.

"Q. And this is the one that you did preserve, is that right? A. That is right."

Mr. Nizer: I propose to go to 266, unless (2022) you want me to read the intervening. At Line 3 on 266.

Mr. VanVoorhis: 262, please, Lines 12 through 14, referring to G30.

Mr. Nizer: All right, I will read what you ask.

"Q. And where did you put it when you received it (:159)? A. I have in Paris for a couple of days, and after that I put in Switzerland in a safe."

Mr. Nizer: Is that all you wanted me to do?

Mr. VanVoorhis: Yes.

Mr. Nizer: Now where do you want to go?

Mr. Greenspoon: 266, Mr. Nizer.

Mr. Nizer: 266, Line 3:

"Q. Did you check with Kabazi as to whether you could make copies of this letter? A. I never ask him and—if I check with Kabazi—

"Q. Did you talk with him to find out whether you could make copies, yes, that is what I mean. A. No, I never ask him.

"Q. Do you know on February 19 or 20th where Kabazi was? A. 19th?

"Q. February 19th, 18th, 19th, 20th? (2023) A. I think he was in Tripoli or Beida."

Mr. Nizer: Well, originally—let's have that clear. Originally, the answer was, "I think he was in where? Beida." And that was changed later to read, "He was in Tripoli or Beida."

Mr. Greenspoon: The explanation given for that, your Honor, was to correct a typographical error.

Mr. Nizer: Well, we object, of course, to that explanation. But it is there. I go to 268.

The Court: Is that one 266?

Mr. Nizer: Page 266, from 3 to 16. To Page 268, Judge, the first line.

Mr. VanVoorhis: All right.

Mr. Nizer: Then I read at Page 268, just the first three lines.

"Q. You appeared in person at the deposition of Kabazi in London, didn't you? A. Yes. That is right."

Mr. Nizer: I skip to 280.

Mr. VanVoorhis: I think we should have the rest of that page.

Mr. Nizer: I will read it. I am going back, your Honor, to 268, Line 4.

(2024) "Q. Did Kabazi talk to you about your being there? A. Did Kabazi—no.

"Q. Who did? Who asked you to be there? A. Nobody. I am in London very often, and then, specially when he was coming there, so I told I go to London.

"Q. It was a sheer coincidence that you happened to be in London when his deposition— A. I know that he will be there—for this reason I come there.

"Q. But you did not know for what reason he was going to be there, that is what you are telling me? A. No. I know it very well. First thing he was for his medical treatment of his ear, and secondly, when he agreed not to come to New York, when he is ready t come to London, then I know that he will be witness in London. I don't think so he like it very much, but he told—I don't have anything to—"

Mr. Nizer: Do you want me to read on?

Mr. VanVoorhis: I think that is enough.

Mr. Nizer: I skip from there to 280. I propose to read from Line 22 on 280.

Mr. VanVoorhis: No objection.

"Q. You told us that you made how many copies of G30 (P159)? (2025) A. I told you four or five. If I done it after some, I don't know.

"Q. Did you ever make any more copies? A. I don't think so I needed more.

"Q. What did you do with the copies that you made? A. I keep them for me."

Mr. Nizer: I skip to the next page on Line 11.

Mr. Greenspoon: Go ahead.

Mr. Nizer: I better start at Line 2 to make it clear—Line 3 on Page 282:

"Q. You have a briefcase in which you put these copies in? A. Some document I put was—I keep it there also.

"Q. And that, what is it, a letter briefcase? A. Yes.

"Q. And you put it in there on February 18th or 19th, 1966, these copies? A. That's right.

"Q. And they have been there ever since? A. No. I use it. Some copy. And I have still one or two, I don't know. I don't look even. I made one or two, I have it.

"Q. What did you do with those that you haven't got any more? (2026) A. What I—probably first one I sent here.

"Q. What do you mean by 'here,' to whom? A. New York, to Holtzmann."

Mr. Nizer: I skip to 292, Line 18.

Mr. VanVoorhis: All right.

Mr. Nizer: In order to make 292 clear as to what we are referring to, may I go back, your Honor, to 290, because it won't be clear otherwise. Reading—I have to go back to 289. I apologize. 289, Line 19—or it won't be clear.

"Q. After you talked—I am trying to fix the date. In March 1966, after you talked to your lawyer in March of 1966, did you send a photostatic copy of G30 (P159) to Mr. Holtzmann or before? A. Before or in the same time or couple of days later.

"Q. In March 1966? A. March or—I cannot tell you. It was after two, three weeks or when I come here. I don't remember. I don't really remember.

"Q. Did you mail that copy to Mr. Holtzmann? A. I think I mailed.

"Q. Did you have a letter with the explanation what it was? Did you tell him what you were sending him? (2027) A. No. I send him in the—in the envelope just the—just the copy of the letter photostat.

"Q. And nothing else? A. Nothing else."

Now, from there continuing to 292, I think it will be clear that it refers to the same subject matter. 292, Line 18.

Mr. Greenspoon: Go ahead.

"Q. And how did you address it? Did you send it personally or your secretary? A. No, myself.

"Q. You put it in an envelope? A. No, I know that I put in an envelope. I know before I was flying to Switzerland at Orly.

"Q. You mailed the envelope with the photostatic copy of G30 (P159) to Mr. Holtzmann from the airport in Orly? A. Orly.

"Q. Why didn't you write a letter to Mr. Holtzmann covering that, saying what it was, why you were sending it to him, is there any reason? A. No, no reason. I was thinking in the car when I was going to the airport, and I have it in my briefcase, so I told to myself, I send him a copy of this letter.

(2028) "Q. Did Mr. Holtzmann or his office ever acknowledge receipt of that letter? A. No."

Mr. Nizer: I skip on the same page to Line 22.

Mr. VanVoorhis: All right.

"Q. Did you send any other copies? You said you have two left. Did you send any copies out to anybody? A. No.

"Q. You never sent a copy to Mr. Allen, Herbert Allen or Charles Allen, is that right? A. It was to Mr. Holtzmann.

"Q. Did you ever send a copy to Herbert Allen or Charles Allen is my question. A. I don't remember."

Mr. Nizer: Did you want more? I will read it if you wish me to.

Mr. VanVoorhis: I don't think so.

Mr. Nizer: I skip from there to 296, the first line. I think it will be clear, the sequence. He is talking of the Swiss bank there, Swiss deposit banks. May I go ahead?

Mr. VanVoorhis: Yes.

"Q. But you didn't take it out? (2029) A. No. I take it out when I went—when I bring that to Holtzmann office here.

"Q. Did you come right from Switzerland to the Holtzmann office here? A. No.

"Q. When you took the original of G30 (P159) to Switzerland, did you take any of the other copies with you to deposit in the box? A. To deposit in the box?

"Q. Yes. A. No.

"Q. The answer is no? A. No.

"Q. The only document you took to the Swiss box was the original, is that right?"

Mr. Greenspoon: I think you should read the colloquy because that clarifies the question.

"Mr. Greenspoon: You mean the only copy of this piece of paper? You are not talking he didn't have other things there, is that what you meant?

"Mr. Nizer: That is right.

"A. Right."

Mr. Nizer: I skip from there to 297, Line 9:

(2030) Mr. VanVoorhis: All right.

"Q. Did you ever give Herbert Allen a copy of—withdrawn. Did you ever ask Herbert Allen to give you a copy of G30 (P159)? A. If I ask Herbert Allen—

"Q. To give you a copy of G30 (P159). A. Yes. I ask him when I was in Rome, when I—when I ask Kabazi to testify to this letter. And I was in Rome, and I don't have a copy with me. In fact, I forgot to take my case, running to the air port. And when I arrive in Rome I

ask him to send me—to send me a photostat copy of this letter. But when I go with Kabazi at the consulate, I don't have anything to testify. So I was out of that and I was on the road to Rome."

Mr. Nizer: Now I skip to the next volume from there. This is 297, and I skip from there to Volume 4. It begins with 302, and I propose to begin at 322, Line 18.

Mr. VanVoorhis: All right.

Mr. Nizer: 322, Line 18.

"Q. The file that you had with letters and cables of Ogbi, you have delivered to anyone, Mr. Holtzmann's office? A. To my lawyer after that to Holtzmann's office.

"Q. Is the reason that you sent it to Holtzmann's (2031) office, you wanted to help Mr. Charles Allen and Herbert Allen? A. It is not to help. I know that they have a case, that they have a problem between them.

"Q. And you had an interest in that, you told us, 50 per cent of the profits? A. Yes. That is the reason I settle with Mr. Hammer. He was pushing all—"

Mr. Greenspoon: The word "Charlie" was inserted in there, I think.

The Court: It is in this copy. After "he, Charlie"—

Mr. VanVoorhis: The context shows clearly it was Charlie.

Mr. Nizer: Is that on my correction list?

Mr. Pollio: No.

Mr. Nizer: I will put it in nevertheless.

"A. Yes. That is the reason I settle with Mr. Hammer. He, Charlie, was pushing all the time to settle."

Mr. Nizer: I skip to 329, Line 10.

Mr. VanVoorhis: Go ahead.

Mr. Nizer: I am reading now from Page 329, Line 10:

"Q. My question is, is the reason that you didn't (2032) want to see him"—that is DeRovin in context—" and have lunch or have contact with him is that in view of that report you felt that he was dishonest? A. Yes."

Mr. Nizer: I skip to 333, from 329, Line 14. 333, Line 12.

"Q. Did you ever use any code name in any correspondence with anybody except, you have said, the Hammer code name, the French code name for Hammer? Did you ever use anything else? A. No. I don't have any code."

Mr. Nizer: I skip from that line, which is 16 on 333 to 337, Line 18.

Mr. Greenspoon: I think you ought to start one question earlier, Mr. Nizer, to put it in context.

Mr. Nizer: All right. You want me to start at Line 12?

Mr. VanVoorhis: 14.

"Q. When you say that bad report from—that Klehe showed you in his office, did you call Charles or Herbert Allen to tell them about it? A. No, I called Hammer.

"Q. Did you ever write to Charles or Herbert Allen telling them about DeRovin's record? (2033) A. Oh, probably much later on. I was breaking my head, just how I can go out of that and how I can take it—Occidental that he stay more in Libya. That was my point. To know from other sides I was sure that—and Klehe told me that they will communicate it with Allen. They will tell him or send him report."

Mr. Nizer: I skip to 359, Line 2.

Mr. VanVoorhis: We would like to have on Page 349, Line 18 through Line 18 on the following page, 350.

Mr. Nizer: All right, I will read it in your behalf, 349, Line 18.

"Q. Did you ever have any correspondence with the German company known as Wintershal? A. No.

"Q. You never wrote a letter to any of their representatives? A. No.

"Q. And they never sent neither their representative nor any officer of Wintershal ever sent a letter to you, is that correct? A. Correct.

"Q. And did you ever have a cable exchange of any kind between Wintershal and yourself? A. No.

(2034) "Q. Did you ever have any exchange of writing with another German company that was seeking oil concessions in Libya? A. No.

"Q. Did you ever have any cable exchange with any other German company? A. They don't need me.

"Q. Did you ever write to anyone— A. No.

"Q. —on behalf of any German company to make an inquiry concerning their application for oil concessions? A. No."

Mr. Nizer: Do you want me to read anything else?

Mr. Greenspoon: I have forgotten where you said you were going to.

Mr. Nizer: 359, Line 2.

Mr. VanVoorhis: All right.

Mr. Nizer: Reading from 359, Line 2:

"Q. Can you fix that date, when was the first time that the Occidental people and you saw Kabazi as a result of the arrangement made by Ogbi with Kabazi?

"What date was that, what time? (2035) A. I don't know. Probably was October, December.

"Q. Of 1964? A. Yes.

"Q. How long were you in Libya on that occasion? A. A couple of days.

"Q. And did you stop at a hotel at that time? A. Yes.

"Q. What hotel was that? A. Palace Hotel."

Mr. Nizer: I want to skip to 365, Line 11.

Mr. VanVoorhis: All right.

"Q. When you visited Kabazi for the first time, you told us that it was Ogbi who arranged that meeting. Was he there at that meeting with you? Was he not? A. No.

"Q. You say that the only people who were there were Brenner, Vaughan and yourself, is that right? A. Yes.

"Q. Was DeRovin there? A. No.

"Q. When did you meet Mr. Vaughan for the first time? A. I think in Libya before or in Libya.

"Q. Pardon? (2036) A. In Libya, or before going to Libya, I don't remember.

"Q. You don't remember whether you met him in Libya or any other place for the first time? A. Or in Paris Brenner present me or in Libya Brenner present me.

"Q. Do you remember what year you first met him? A. No. It must be when we was by—in the Minister of Petroleum, Kabazi.

"Q. And that you say was October, November 1964? A. Yes.

"Q. To your knowledge, had Mr. Vaughan visited Libya on Occidental business before you did? A. I don't know that. Ask Dr. Hammer, not me.

"Q. You don't know that? A. No.

"Q. Did Mr. Vaughan ever tell you that he had been there before? A. I don't talk to him about it.

"Q. To your knowledge, had Ogbi been to Libya before you? A. He is Libyan.

"Q. The answer is yes, right? A. Yes.

(2037) "Q. To your knowledge had DeRovin been to Libya before you? A. Explain me dates.

"Q. To your knowledge do you know whether DeRovin had been in Libya—had been to Libya before you ever visited Libya? A. He was with Brenner before me.

"Q. Do you knowledge had Brenner been to Libya before you? A. Yes. He go with DeRovin.

"Q. To your knowledge had Vaughan—you have answered that Vaughan—you didn't know one way or the other or do you? A. No.

"Q. To your knowledge did Lawler know Kabazi before you did? A. I think he knew him.

"Q. Before you did, is my question. A. I think yes. I don't know."

Mr. Nizer: I skip from Line 21 on that page, which is 367 to 382.

The Court: I think at this point we will take our mid-morning recess. What line are you going to?

Mr. Nizer: 382, Line 7.

(Recess.)

(2038) Mr. VanVoorhis: We would like, please, to have read in page 367, line 22, through page 368, line 8.

Mr. Nizer: At plaintiff's request, I will read it for them, page 367, line 22:

"Q. Between September, 1964, and April, 1965, did you ask any representative of Occidental to get rid of Ogbi? A. I don't ask them to get rid of him, but to take—not to be too much involved with him. That was in the moment when I start to be good friend with Kabazi. And I understand from Kabazi that his relationship with Ogbi was polite. And I think inside was some difference between them. So, for this reason, I know it that I cannot do it better with Ogbi. And for this reason I told to Occidental, keep it slowly away from Ogbi."

Mr. VanVoorhis: That is enough, as far as we are concerned.

Mr. Nizer: Then I will skip to page 370, instead of 382, to continue that line. Page 370, line 18:

"Q. How many times did you ask, so far as you can remember, anybody in Occidental to push Ogbi to the side in this Libyan concession matter, many times, few times? A. I told—I see just Vaughan twice, so I talk to Vaughan once, probably, when we was in Libya and in Paris. (2039) And to Brenner, also.

"Q. Did you ever say on the telephone to Dr. Hammer the same thing or not? A. Yes. I think I told him on the telephone.

"Q. All together, how many requests, recommendations, suggestions, did you make to Occidental people to get rid of or to push to the side Ogbi— A. I don't know.

"Q. You don't know whether it is more than a half dozen times or less? A. Probably—I don't know. If I tell you it is three times or five times, it will be something from my head. I know that I done it and that is all what I can tell you."

Mr. VanVoorhis: There is more to the answer—oh, I beg your pardon. It is a misprint.

Mr. Nizer: Page 372, to continue that line you asked me to read, line 22:

"Q. Did Brenner agree with your recommendation that Ogbi should be pushed aside? A. Brenner know it. He was asking me every—when he see me who he was. So I told him—

"Q. No. My question is did Brenner agree with your recommendation that Ogbi be pushed aside or didn't he? (2040) A. Yes. I don't give him reason why I told him, but I told him. He believe it, but I know it everything what I told him up to—up to the date it was exact.

"Q. My question is did Brenner agree with your recommendation that Ogbi be pushed aside? A. I think yes.

"Q. Did he tell you that? A. I think yes, also.

"Q. Did he write to you about that? A. No.

Ferdinand Galic, E.B.T.

"Q. Between September 1964 and April 1965, did you have any disagreement with Brenner concerning Ogbi? A. I don't have disagreement.

"Q. All right, the answer is no to that? A. No.

"Q. Did Brenner ever prepare any document in February 1965, confirming Ogbi's position despite your recommendation? A. He prepared some document. What document?

"Q. Any document which would retain Ogbi, which would put him, confirm his relationship for Occidental.

"Mr. Nizer: Does he know whether he prepared any such document.

"A. I don't know if they do it.

"Q. You don't know? (2041) A. No.

"Q. Did you ever complain to Dr. Hammer that Brenner had acted contrary to your recommendation about Ogbi, or didn't you? A. I don't remember.

"Q. You don't remember whether you did or not? A. Yes, I don't remember."

Now, I will go—

Mr. VanVoorhis: In the light of that, I think it would be appropriate to read page 371, commencing line 22—

The Court: 371 was started at line 13 and went to the end. What is the problem?

Mr. VanVoorhis: I know, but this relates to what has just been read. It is part of what was skipped in passing. We would request that line 22, page 371 be read, through page 372, line 18.

Mr. Nizer: Well, subject to my objection all along to this, I will read it. I understand your Honor is taking it that way.

I will read on at plaintiff's request:

"Q. I am not asking you to repeat what you told me. Listen to my question. Was one of the reasons that you

gave that Ogbi had no real influence in the Ministry, in the (2042) cabinet, in the government? Was that one of the reasons? A. Yes. If I answer you each question, then it is all right.

"Q. All right, answer each. A. Ogbi have influence politically. And personal contact with Kabazi was not very bad. Not very well. The contact between Ogbi and Kabazi was polite. Maybe not something that Kabazi will do it, if Ogbi ask him. He will give him some polite answer, negative or positive, promising him, that never something I cannot base myself that cannot be done, if I don't push from my side.

"Q. You telephoned Dr. Hammer, as you told us, and told him not to use Ogbi for this matter, in effect? A. Yes.

"Q. Was anyone with you at the time when you telephoned Dr. Hammer on that? A. No."

Now we go to page 382, line 7.

"Q. When did you meet Khogia for the first time? A. December or January.

"Q. Of what year? A. 1965.

"Q. And January 1966? A. No.

(2043) "Q. December 1965; is that what you mean? A. 1965, 1964 or—

"Q. December 1964 or January 1965? A. Yes.

"Q. And was it DeRovin who introduced you to Khogia? A. Yes.

"Q. And that was the first time you met Khogia? A. that is right."

I go to page 404, from page 382, line 21, just one question at line 7:

"Q. Before July 1965 did you tell Kabazi that DeRovin was a crook? A. I think yes."

Ferdinand Galic, E.B.T.

I skip from there to 408, line 13:

"Q. Do you know a Mr. Pierre Frottier? A. Yes.
"Q. In your testimony yesterday, in direct examination, you never mentioned Mr. Frottier, did you?"

Mr. Greenspoon: I think you should read the objection.

Mr. Nizer: "That is objected to as to form. He wasn't asked any such question.

"A. Frottier was in connection just with the deal (2044) when was Slim—when I heard about Slim, that he can do it. That was Frottier and Slim just for this period. Two times or 45 days. And when I see it, that was nothing done, that was finished with Frottier and Slim and this deal."

I skip to page 410, line 12:

"Q. Did you ever tell Kabazi that Frottier was associated with you, concerning Occidental? A. No. He was associated for 45 days, over how long was contract.
"Q. Did you ever mention Frottier's name to Kabazi? A. No."

I go to page 414 from there, line 17:

"Q. It was you who recommended, that is my question—we passed the other—it was you who recommended to Occidental that Slim, in addition to Frottier, DeRovin and yourself, be brought in to try to help; is that right? A. Yes."

I go to 429, from 414, line 24.

Mr. VanVoorhis: We would like page 415, beginning with line 12 through line 15 on page 416.

Mr. Nizer: I read that as plaintiff's offer:

"Q. You talked about the financing of Kabazi on this (2045) motion picture script? A. I don't finance Kabazi.

I take it—I told him I will—when he show me his script, so I told him I will interest me to do a picture.

"Q. And did you do that? A. Yes, I done a picture.

"Q. And did you put up any money? A. Yes.

"Q. How much? A. Oh, I spend in Libya, 50, 60 million lira.

"Q. How much is that in American dollars? A. About $100,000."

Mr. VanVoorhis: Perhaps you better read the colloquy—no, all right, go ahead.

Mr. Nizer:

"Q. Do you know the relationship between lira and dollars? A. Yes. In fact, in the beginning they done it financial program, and in beginning has not more cost $80,000.

"Q. But it went up to a hundred? A. Has gone after that I have to pay the films and copy, they done it about 11, 12 thousand meters. They was couple, many months. All across Libya."

Now I go to 429, line 21:

(2046) "Q. Now you say that you met Ogbi for the first time in London in September 1964? A. Yes.

"Q. Before that time in September 1964, did you know who Ogbi was? A. Through DeRovin, what he told me that he was president of the Chamber of the Congress. He is in political life.

"Q. So that in September 1964 you considered Ogbi a very important man in Libya at that time? A. Yes.

"Q. Prior to September 1964, did you—before September 1964, did you consider Ogbi the best possible contact in Libya in connection with oil concessions? A. On the basis what told me DeRovin.

"Q. The answer is yes? A. Yes. On the basis of that. I don't know it. I don't check myself. Just on the basis they told me of DeRovin.

"Q. So relying on DeRovin, you so felt that he was? A. That is right."

I go from there, line 17, page 430, page 437, line 6:

"Q. Perhaps the word session isn't clear. I say that it was, it is a fact, is it not, that it was DeRovin who (2047) got you into the picture of the concessions in Libya and not you who got DeRovin into the picture; is that correct? A. That is right.

"Q. And it was DeRovin, was it not, who arranged the meeting in London in September 1964, was it not? A. It was from Occidental also.

"Q. DeRovin and Occidental? A. DeRovin and Occidental."

Mr. Greenspoon: The answer continues on line 20, Mr. Nizer.

Mr. Nizer: Well, there is another question. Do you want me to read it?

Mr. Greenspoon: There is no question.

Mr. VanVoorhis: Yes, there is.

Mr. Nizer: I will read it, if you want.

The Court: The copy reads, "You were incited," and invited?

Mr. Nizer: Invited, yes.

"Q. And you were invited—go ahead. A. And Herbert Allen, he called me and he told me we will be meeting there. I will be in the meeting.

"Q. I, meaning Herbert Allen? A. Yes, Herbert Allen."

Now I go to page 507, in another volume.

(2048) Mr. Greenspoon: Why don't we go over there and then we can come back if we have to, because this is a long jump? You are going from page 439 to page 507?

Mr. Nizer: That is correct.

Mr. Greenspoon: Why don't we check that at the luncheon recess, to save time, unless you want to do it now?

Mr. VanVoorhis: I don't think it will take us long. I think we can go through that fairly rapidly.

(Pause)

Mr. VanVoorhis: It is all right, so far as we believe. There is just a bare possibility we may ask to read something intervening, but it is very improbable.

Mr. Nizer: Line 19.

"Q. Prior to the meeting in London in September, '64, did anyone give you any assurance that Occidental would get the best oil concessions in Libya? A. Ogbi was present there, I know him just in the same day Dr. Hammer. He talks to him like me. So he was sure that he can obtain the best parts of the concession."

(2049) Mr. Nizer: 508, Line 2:

"Q. And you hadn't yet met Kabazi at that time? A. September, no.

"Q. Did DeRovin ever give you assurance that Occidental would get the best possible oil concessions? Prior to September 1964? A. DeRovin probably—that was told him by Ogbi. He talked to me that same.

"Q. What concession did either Ogbi or DeRovin, what number of concession, what block or description did they assure you that Occidental would obtain, prior to the September 1964 meeting? A. They put it in the contract, so you take a contract—

"Q. No, please. You tell me if you know. A. No, I don't remember now.

"Q. Did they tell you the number of the block or concession? A. Yes. They put it in the contract. What Occidental write a contract.

"Q. I am talking about prior to the September 1964 meeting. I am not talking about any contract. I am talk-

ing about prior to the meeting, before any deals were made. (2050) A. Before—

"Q. And my question is did either Ogbi or DeRovin mention a block number in their assurances that you gave that there will be a good concession? A. That was up to Occidental to choose the concession.

"Q. But they didn't mention any, that is the answer? A. Yes.

"Q. So before you even met Kabazi, you were enthusiastic and gave assurances of great success to Occidental, didn't you? Do you understand my question? A. I was enthusiastic.

"Q. Do you know what enthusiastic means? A. Yes.

"Q. Didn't you give enthusiastic assurances to Occidental of the great success that would be coming to Occidental on the concessions before you even met Kabazi? A. That was just through Ogbi who confirmed I am in the position to arrange that he receive what he believe and I believe it.

"Q. So you gave those assurances whether you relied— A. Not just me.

"Q. Ogbi, too? A. Ogbi and Brenner, also."

(2051) Mr. Nizer: I skip to the next page, 511, Line 3.

Mr. VanVoorhis: All right.

"Q. Were you giving that kind of assurance, no matter on what basis you were doing it, to Occidental prior to the meeting of September 1964? A. What is prior to?

"Q. Before. A. Before?

"Q. Before the London meetings. A. Before the London meetings? When I have a report that he can obtain the concession, then DeRovin, first is meeting with him, how he explain to me that he is sure that they can do it, so I take it for sure that they can do it. For this reason I was meeting in London."

Mr. Nizer: I skip to 513, Line 14.

Mr. Greenspoon: Go ahead.

Ferdinand Galic, E.B.T.

"Q. Did you ever give any part of your interest, under the letter agreement of September 18, 1964, to DeRovin? A. No, I don't have it to—

"Q. Did DeRovin ever claim that you had assigned a part of your interest to him? (2052) A. No. DeRovin has to give a part to me."

Mr. Nizer: I skip from there, which is 531, Line 21, to 515, Line 23.

"Q. Did DeRovin ever assign any of his compensation to you? A. Yes.

"Q. Was that assignment in writing? A. Yes."

Mr. Nizer: I go to the next page at the bottom of the page, Line 23, beginning with "Mr. Nizer: Mark it for identification."

I will qualify it and then I want to offer it in evidence, gentlemen.

Mr. VanVoorhis: All right, except I think we may possibly object to the introduction of it as immaterial.

Mr. Nizer: All right, we will come to that in a moment.

Reading from 518, continuing—

"Mr. Nizer: Mark it for identification. Document entitled 'Protocole Daccord, dated September 22, 1964, with attachment marked Defendant's Exhibit G17 for identification as of this date."

"Q. The date of this document is, on its face, (2053) September 22, 1964. To the best of your recollection, was it signed on that day, four days after your contract with— A. Probably.

"Q. So far as you know, before July 1965, Dr. Hammer did not know of this assignment by DeRovin to you, did he, so far as you know? A. I don't think so. He knew about that later on. He know it about this letter later on.

Ferdinand Galic, E.B.T.

"Q. Yes. But I say, the answer to my question is 'No'? A. July 1965, no."

Mr. Nizer: I offer in evidence Defendant's Exhibit G17 marked at that time, an English translation of the French document. It is now P44, your Honor.

Mr. VanVoorhis: We object to it as irrelevant and immaterial.

The Court: You say it is in evidence already?

Mr. Greenspoon: No.

Mr. Nizer: It was marked to be by both sides.

Mr. VanVoorhis: For identification, I think.

Mr. Nizer: Yes, it is not in evidence yet. It is the assignment.

The Court: I will receive it. But what is its relevance, Mr. Nizer?

(2054) Mr. Nizer: Exhibit A, the alleged joint agreement, for bids or—excuse me.

The agreements with Ogbi and Galic and DeRovin, which are Exhibits P36, 37, 38, all for bid assignment of their interests. They must render this personal service. The clause—Mr. Pollio, would you be good enough to give me one of those contracts? I will read the clause to you.

The Court: I will receive it.

(Defendant's Exhibit 61 was received in evidence.)

Mr. Nizer: It also has relevance, your Honor, in connection with the tie-up between these three gentlemen, so that the misfeasance of one of it occurred does have a bearing on the others.

I now skip to 519, the very next page. Line 10.

Mr. Greenspoon: Go ahead.

"Q. Was the Ogbi arrangement with Dr. Hammer on September 18, 1960, signed in your presence? A. I think yes.

"Q. Did you get a copy of it? A. Yes.

"Q. At the same time that it was signed? A. Yes.

"Q. Did you ever send a copy of that to anyone? (2055) A. I don't remember.

"Q. Does it refresh your recollection as to whether you sent a copy to Herbert or Charles Allen? A. I don't remember in that.

"Q. Who gave you the copy of the Ogbi arrangement, Ogbi himself or Dr. Hammer? A. Dr. Hammer, I think."

Mr. Nizer: Do you want me to read anything else, gentlemen?

Mr. Greenspoon: You are going to Line 10?

Mr. Nizer: I am going to continue with what I was going to read, Page 520, Line 10.

Mr. Greenspoon: There is nothing in between.

Mr. Nizer: All right.

"Q. Did Mr. Ogbi ever assign any of his compensation under that arrangement, under that P7A (P38) contract to anyone? A. That I don't know.

"Q. Do you know whether he ever assigned any portion of his interest in that contract to DeRovin? A. Yes.

"Q. And how much did he assign to him? A. Just like you see there, 10 per cent from this amount that he has to receive that he give to DeRovin."

(2056) Mr. Nizer: I skip from there to 527, Line 9.

Mr. VanVoorhis: All right.

"Q. Did you deliver that document now marked Defendant's Exhibit G18 (P64) to Mr. Frottier? A. I think I keep this document in trustee, before I don't see it,—don't see it some resort in Libya. I not show it to everybody—"

The Court: This copy contained the word "no" inserted at between "I" and "show".

Mr. Greenspoon: I might tell you in this connection we got daily copy from the reporters and

then the reporters took back the original and made the corrections they would have made had they not given us daily copy and had a chance to read it, so there is lots of changes and corrections made by the reporter, by himself.

Mr. VanVoorhis: I think the second sentence in the answer shows that "not" was intended.

Mr. Nizer: I think it means "not," definitely.

"A. I not show it to everybody. I keep it for me. And I tell all right, you go through the deal.

"Q. Did you give a copy of it to Frottier? A. No. To nobody.

"Q. You held it for Frottier? A. I—it was not just frottier. I was Slim (2057) inside and the others.

"Q. Which one? A. Slim. Frottier has nothing—

"Q. So Frottier never got a copy of that letter? A. No."

Mr. Nizer: Next page, 528.

"Q. To your knowledge, did Frottier ever sign that document? A. No.

"Q. He never did? A. No.

"Q. If this worked out, and Frottier was to receive, if the deal with Frottier worked out, he would have received a million dollars under this arrangement? A. That is right.

"Q. Was Allen to receive, if he got that million dollars, was Allen to receive any portion of it? A. No.

"Q. Did you ever tell anyone that out of the million dollars which Frottier would get if the deal went through, that a part of it would be paid over to the Allens? A. No.

"Q. Did you ever tell anyone that Frottier—withdrawn. Did you ever tell anyone that you would get a (2058) part of this million dollars if it worked out? A. No.

"Q. That DeRovin would get a part of this? A. No. I don't know what they have between them.

"Q. No, did you ever tell anyone? A. No. No.

"Q. You are sure of that, of course? A. What?

"Q. You are sure of that? A. Yes. I don't have anything to do with that.

"Q. Did you ever tell anyone that Frottier, even if he got the million dollars, wouldn't keep any portion of it, it would be divided among Allen, DeRovin and yourself? A. No."

Mr. Nizer: We go to 544 from there, Line 1.
Mr. VanVoorhis: All right.

"Q. Did you ever tell DeRovin or anyone else that he was better qualified than you to obtain the best results from Occidental in Libya? A. No.

"Q. Did you ever travel to Libya with Frottier? A. No. I told you before.

"Q. Did Frottier, to your knowledge, ever meet DeRovin in Libya? (2059) A. No.

"Q. Did Frottier and DeRovin ever meet with Kabazi in Libya? A. No."

Mr. Nizer: Skipping from there, which is 544, Line 12, to 546, Line 3.

"Q. In the beginning of 1965, did you inquire of DeRovin or Ogbi whether oil concessions were obtainable in Libya without submitting bids? A. Yes. And it was—they were—Ogbi and DeRovin, they were thinking that they can obtain when—my information was that must be bid.

"Q. What did you ask DeRovin or Ogbi or both to tell you on that occasion? You spoke to them, I take it? A. Yes.

"Q. And where did you speak to them? A. In the hotel or in the—

"Q. In Libya? A. In Libya. In the office of Ogbi once or two.

"Q. Would that be in the beginning of 1965? A. It was more to—in 1964 then in 1965 that Ogbi—I started from 1965 to—to have the communication just through DeRovin or outside of him.

"Q. I am not sure I understand that. You mean that (2060) in 1965, in the beginning of 1965, you didn't make these inquiries through DeRovin, is that what you mean? A. Through? No, DeRovin he told me always, what he told me, he told me what he wanted and what was convenient for him, what he was living under imagination, DeRovin, Ogbi told me or I know that, but I don't give very much to that after how I told you I was with Kabazi and—I know everything from Kabazi himself.

"Q. By February 1965 did you have these confidential visits with Kabazi? A. I think it was in February.

"Q. Did you at that—let's move it up to around February, then, 1965. Did you ask Ogbi or DeRovin to find out whether concessions could be obtained without bids? A. No. DeRovin was all times confirming that he can do it but I know that it was not possible.

"Q. So you didn't ask him, then, if you knew it was impossible? A. No.

"Q. So is the answer to my— A. He was asking me—he was telling me all times that he will have it, but I don't believe it.

"Q. My question is not what he was telling you, (2061) but did you ask him to find out or Ogbi whether concessions could be obtained without bids? A. Probably, to know what they think, what they doing and—

"Q. Weren't you in touch with Kabazi at that time? A. Yes.

"Q. Did you have to ask DeRovin— A. I ask just to listen to everybody.

"Q. So you do remember in the beginning of 1965, or February 1965, at least in the early part of the year of 1965, you do remember now that you asked Ogbi or DeRovin to find out whether concessions could be obtained

without bidding, didn't you? A. I cannot confirming on this, what you tell me. I know that DeRovin—

"Q. No, I am asking you whether you asked him. Not what DeRovin said. But did you ask him to find out whether he could obtain satisfaction on the bids without— A. I don't remember.

"Q. —on the concessions without bidding? A. I don't remember. But I don't give any importance to that so—"

Mr. Nizer: I go to 553, Line 10.

(2062) "Q. Did you ever ask either Ogbi or DeRovin or anyone else to send you a cable, to give you the news urgently, as to whether concessions could be obtained without bidding? A. It is possible, but I am not sure. It is possible."

Mr. Nizer: Go to the next page, 554, Line 4.
Mr. VanVoorhis: All right.

"Q. My question, Mr. Galic, is did you in February 1965, know yourself from Kabazi whether concessions would have to be obtained on bids? A. Yes, I know it that it has to be bids.

"Q. Did you in January 1965, know yourself, by talking to Kabazi, that concessions would have to be obtained by bids and not by negotiation? A. Yes.

"Q. Did you know in December 1964, that concessions— from Kabazi—that concessions would have to be obtained by bids and not by negotiation? A. That mean by bidding?

"Q. By bidding. A. By bidding, yes.

"Q. Did you know that? A. Yes, I know it.

(2063) "Q. I understand you know. My question is in November 1964, did you know that? A. I know always that was by bidding. It just a rumor of DeRovin who was I can obtain, I can obtain, that is all."

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Reading the next page:

"Q. Did you ever tell Charles or Herbert Allen that concessions could be obtained without bidding? A. I don't think so. I don't remember.

"Q. If you knew as early as November 1964, December 1964 and January 1965, and thereafter, I assume from what you said,— A. I was not with Allen—

"Q. If you knew at all those times that concessions would have to be obtained by bidding, I ask you whether you told Charles Allen or Herbert Allen that it could be obtained without bidding at those periods? A. If I told, I told to Dr. Hammer.

"Q. Did you tell anything to Allen to that effect? A. I don't think so.

"Q. When did you tell Dr. Hammer that concessions could be obtained in Libya without bidding? A. Never. That I was doubting myself of that, and he know it like me, and that has to be bidding.

(2064) "Q. But I thought a moment ago, maybe I misunderstood you, Mr. Galic, I thought you said if I told, I told to Dr. Hammer, not to Mr. Allen. A. If I told you ask me—

"Q. Then you say you never did tell him? A. I have just new of negotiation just through DeRovin. Nobody other."

Mr. Nizer: The original answer said "I have just news of bidding, just through DeRovin and "bidding" has been changed to "negotiation," and I think that is what he meant whether he said it or not.

Mr. Greenspoon: Let me see what reason is given.

He says typographical change, because he made an error.

"Q. And you of course were talking to Kabazi so you knew it wasn't true? A. That was bidding and we were always prepared under bidding."

Mr. Nizer: Skip to Line 19.

"Q. In about February 1965, did you know when the invitations for bids would be issued by the Libyan government? A. No, that—

(2065) "Q. In talking to Kabazi, did you know that? A. Kabazi has to wait the green light from the king."

Mr. Nizer: We go to 557, Line 8.

"Q. So the answer, therefore, I take it, to my question is that in February 1965 you did not know when the invitations for bids would be issued by the Libyan government? A. We was expecting to be next week or over next week.

"Q. You were expecting but you didn't know? A. No.

"Q. Did you ever ask anybody to find out for you? A. I was on the right source to know.

"Q. Who is that? A. Kabazi.

"Q. So you never asked anybody else, did you? A. I don't need to.

"Q. Did you ever ask anyone to check with Kabazi for you as to whether Khogia should take the place of Ogbi? A. No."

Mr. Nizer: I go from there to 559, Line 17.

"Q. When you were in London in September 1964, did you assure Dr. Hammer that Occidental would receive concessions (2066) before March 1965? A. We was assuring each other. He has the same—

"Q. Did you assure him? A. He was assuring me like I am.

"Q. He assured you that he would obtain a concession by March 1965? A. No. We can base"—and then the words "our opinion" was inserted—we can base our opinion just on what Ogbi told us at this time.

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"Q. My question is, and will you please answer it, if you can, did you assure Dr. Hammer or didn't you that he would— A. I—

"Q. Listen to me, please, and answer it. Did you assure Dr. Hammer or did you not in September 1964, that he would obtain concessions for oil in Libya by March 1965? Did you or did you not do that? A. Knowing that you knowing this case, I don't—cannot understand you, like lawyer, how you can ask me, when I was not Minister of Oil. We was meeting Ogbi first time there, and he was telling us, 'Sure, through me you will have a concession.' That is all what Dr. Hammer can tell you and I can tell you.

"Q. So therefore your answer is no."

(2067) Mr. Nizer: 562, Line 18.

"Q. Who could do it without bids. Did you ever state to anyone that you and Ogbi had represented to Dr. Hammer, that you and Ogbi had represented to Dr. Hammer that he would have concessions before March 1965? A. If I represented—

"Q. If you told him that you gave assurances, is that clearer to you? A. To who?

"Q. To Dr. Hammer, that he would have concessions by March 1965. A. No."

Mr. Nizer: Now going to 564, Line 20.

Mr. VanVoorhis: I think we would like Line 9, if you don't mind.

Mr. Nizer: All right. It will be at Plaintiff's request, Line 9 from Page 564.

"Q. Had Occidental obtained any oil concessions in Libya prior to March 1965, to your knowledge? A. No.

"Q. In March 1965, were you representing any company—do you know what 'representing a company' means? A. Yes.

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"Q. —any company, except Occidental, in Libya, (2068) with regard to oil concessions? A. Just Libya—just Occidental.

"Q. So the answer to my question is no, you weren't representing anyone? A. Yes. Anyone.

"Q. In March 1965, did you know of any German company or German group which was interested in oil concessions in Libya? A. I know the German they wanted to have concession, and I know that was pushing the government to give them, German government intervened by government of Libya. They gave them away also they do not have concessions, they will not buy more oil in Libya."

Mr. Nizer: Page 565:

"Q. In March 1965 had you met any representative of the Wintershal Company? A. No.

"Q. Who were the companies, if you know, that made up the German group that was bidding for concessions? A. They told me the name, and I know it, the name of—through Kabazi, what he told me, a couple of the company, but I never discuss that. I was interested just obtain for us. That is all.

(2069) "Q. Do you know a company called Elerwath, a German company? A. I don't know.

"Q. Elerwath, if that is the way you pronounce it. A. I don't know.

"Q. Have you ever heard of a company called Rheinsachs? A. Just in the papers.

"Q. Have you ever heard of a company Shlovin Chemie? A. They are very well known.

"Q. Were they one of the companies in the German group? A. Yes. I don't know—I never worry about that.

"Q. I didn't ask you whether you worry. A. I tell you.

"Q. Did you know that they were one of the companies in the German group? A. Some, I know there is many

German company there—I don't stipulate whether it is Rheinsche, or Shlovin or Elerwath.

"Q. Did you ever hear of a company called Gelsenberg, Mobil-Gelsenberg combination? A. I heard just like you in the papers or otherwise (2070) nothing.

"Q. In March 1965, had you met any representative of Elerwath Company? A. No.

"Q. In March 1965 or earlier had you met any representative of the Union Rheinsche Company? A. No.

"Q. In March 1965 had you met any representative of Shlovin Chemie? A. No.

"Q. In March 1965 had you met any representative of Gelsenberg Company? A. No.

"Q. In March 1965, had you met any representative of Wintershal? A. No.

"Q. In March 1965 did you request anyone to check with the Libyan Government as to whether it would be willing to accept a German group for an oil concession? A. No, I know it that German group they will have concession, but nobody know it what, how and if—and at the end I think they was obliged to give to all German group concession.

(2071) "Q. My question is in March 1965 did you request anyone to check with the Libyan Government as to whether it would be willing to accept a German group for an oil concession. That is my question. A. Yes.

"Q. You did? A. Yes.

"Q. Who did you ask in the German—withdrawn. Who did you ask to check with the Libyan Government as to whether it would be willing to accept a German group for an oil concession? A. Myself.

"Q. You didn't ask anybody else to do it, you did it yourself? A. Yes.

"Q. And who did you talk to? A. I ask Kabazi.

"Q. Do you know a man called W. H. Fox? A. Yes.

"Q. Who is he? A. He is the administrator of the Wintershal.

"Q. That is one of the German companies? A. Yes.

"Q. Is he sometimes called W. H. Pitt-Fox? (2072) A. I don't know.

"Q. When did you meet Fox. W. H. Fox of Wintershal Company for the first time? A. Oh, before any concession and everything, we was talking about tanker shipping.

"Q. When did you meet him for the first time, is my question. A. '63, End of '63.

"Q. Did you see him after that? A. I see him in one occasion in Libya. When I was going from Leptus-Magna to the airport.

"Q. I said when. A. I don't know when was.

"Q. In Libya? A. In Libya.

"Q. But what year? A. That was just passing.

"Q. What year is what I am asking, not whether you were passing. A. I don't know.

"Q. Was it '65, '64, '66, when? What year? I am not even asking for a month yet. A. '64—no, '65, I think. '65.

(2073) Q. And was he there representing the Wintershal Company in connection with oil concessions? A. I don't know.

"Q. Where did you meet him in Libya? A. I told you, from going—

"Q. Where? A. From Uaddam.

"Q. The Uaddam, you mean the hotel? A. Yes. From the Uaddam, he was in the door there were two, three gentlemen or so.

"Q. And you were in Libya at that time on oil concessions yourself? A. I was for Occidental.

"Q. Did you know a—did you meet him more than once in Libya, Mr. Fox, of Wintershal? A. No, I don't think so. If was not once in the restaurant, I don't remember now, in Libya. But I don't talk to him.

"Q. Did he ever talk to you about his companies being interested in oil concessions in Libya? A. Yes. When I

was talking to him about German was, they was very close in any information. I remember he told me we buying oil in Libya, and I am there for that. They never—nobody there told—any company told (2074) to any other company anything. Everybody was keeping it a secret.

"Q. Did you ask him what he was doing in Libya? A. Yes. He told me, I am buying oil there.

"Q. Did he tell you also that he was interested in the concessions? A. No, I started to talk to him and then he started out on the shipping.

"Q. So you and Fox never talked about oil concessions in Libya for the German company Wintershal, that is what you are telling us? A. I ask it, but I don't have the answer. But I ask it. But I don't have it answered.

"Q. Did you ask him whether you could represent Wintershal in that matter? A. No. They was represented—

"Q. 'No' is your answer? A. That is right.

"Q. Who is Ernst Denzel? A. This man who was with him all times.

"Q. Who is he? A. I don't know. He is in Wintershal also. I don't know what position he has or what he do. (2075) "Q. Do you know that Fox is the senior director of Wintershal? A. Senior—

"Q. Director. Senior director? A. I know that he was high, but he was—he have another, I think, president over him, who was *de facto*."

Mr. Nizer: Skipping from 572 to 573, Line 15.

The Court: Why don't we take our luncheon recess.

(Luncheon recess.)

Ferdinand Galic, E.B.T.

(2076) Afternoon Session

2 P.M.

Mr. Nizer: We left off at page 573, line 15:

"Q. Was W. H. Fox stopping at the Uaddam Hotel when you met him at that period? A. I don't know.

"Q. In 1965? A. Probably. But some time, like everybody there, who you have room.

"Q. I am not asking about anybody. I say was he? A. Must be. But he was—

"Q. Was Danzel with Fox? A. I think. I think. They was about two, three peoples. He was not just alone. Three or four peoples they was together.

"Q. When did you meet Densel for the first time? A. Just when I was for my shipping, in 1963 or 1964. I meet him all, five or six what would be in the beginning we wanted to build shipping company together.

"Q. Did you meet him in 1964 and 1965 when you were there on the oil concessions? A. If he was with Fox when I told you when he was in before, then probably he was there. But I was rushed to the airport.

(2077) "Q. Did you meet Khogia with Fox at any time? A. No.

"Q. Did you meet Denzel with Fox—with Khogia at any time? A. No.

"Q. Did you ever ask Khogia to talk to Kabazi to see whether he was willing to accept the German company for oil concessions with Libya? A. I don't need it.

"Q. I didn't ask you whether you needed it. Did you ever to it? A. No."

I skip to page 576, line 1:

"Q. Did you in March 1965 request DeRovin to arrange a meeting between you and Khogia in Zurich, Switzerland, to discuss oil concessions for a German group? A. Khogia?

"Q. Yes. A. No."

I go to 580, line 10:

"Q. In March, '65, did you request a meeting with Khogia in Rome or in Paris? A. I don't remember.

"Q. Did you meet Khogia in Rome or in Paris in (2078) March, '65? A. No.

"Q. Did you ask Khogia to meet you in Rome or in Paris to discuss oil concessions for a German group? A. I—no."

Go to the next page, from that place, on line 18, to line 9—

Mr. Greenspoon: What page?

Mr. Nizer: 581:

"Q. Did you ever tell Kabazi that Dr. Hammer had terminated his relationship with DeRovin? A. Never."

Go to page 582, line 2:

"Q. I asked you whether you ever told Kabazi that Dr. Hammer had terminated with DeRovin, and you said never; is that correct? A. No, no.

"Q. Do you want to change that answer? A. No, I don't remember on that. That I don't remember.

"Q. Do you want to change— A. I told him that DeRovin is bad mark and so, but I don't know if I told him that he is not working with—but I was already with Kabazi on this way, that he was (2079) just discussing with me, with anybody."

Skipping to line 24, on the same page:

"Q. If you want to change it, I give you full opportunity. If you don't want to change it, give the same answer. Listen to my question again.

"I asked you, did you ever tell Kabazi that Dr. Hammer had terminated his relationship with DeRovin? A. No.

"Q. Did you ever tell Kabazi that you were withdrawn.

"Did you ever tell DeRovin that Dr. Hammer was going to terminate his agreement because of the report he had received concerning DeRovin, did you tell that to DeRovin? A. No.

"Q. Do you know a Mr. Bennahum? A. Yes.

"Q. Did you ever meet Khogia when he had with him any representative, any officer, official or representative of Wintershal? A. No.

"Q. Is Mr. Bennahum connected with the Klehe company? A. I think so.

"Q. Did DeRovin have any business arrangement with Klehe and Company before March 1965? (2080) A. They was trying something to do. But I don't know what.

"Q. What were they trying to do? A. I don't know.

"Q. What business relationship do you know about? Tell us what you do know, if you know anything. A. I don't know. I know that they was trying to do something, and that exploded because of the report on DeRovin."

Skipping to line 19, same page:

"Q. Did anyone in the Klehe Company tell you that they were breaking up, that there was an explosion of any business arrangement because they heard about the DeRovin report? A. They know that I was a relationship with him so they called me and they told me here is the report, that you know who you dealing.

"Q. And my question is did they also terminate with DeRovin? A. Ask the Klehe Company.

"Q. I am asking you whether you know. A. How can I know? I am not in Klehe Company.

"Q. And you have no knowledge as to whether they broke their arrangements— (2081) A. Probably they break like everybody."

Ferdinand Galic, E.B.T.

Skipping to line 18, same page:

"Q. Do you know for what reason Klehe and Company investigated DeRovin, as you told us? A. They was dealing with—they was discussing some deal with him, and it was accidental that was somebody in the office, how they told me after, who heard about DeRovin, and who seems to see him, and then they started to check up on him. It was some other generals there, the true generals there. DeRovin, he was no general. He was presented.

"Q. Who told you that, Bennahum? A. Klehe.

"Q. Klehe himself? A. In the office of Klehe."

Now I go to page 589, which is another volume.

Mr. VanVoorhis: We would like to have lines 10 through 16, please, on page 587.

Mr. Nizer: I read this on behalf of the plaintiffs, subject to my objection:

"Q. Did you receive any compensation from any German company or group of German companies with regard to oil concessions in Libya? A. Not at all.

(2082) "Q. You have received no compensation directly; is that right? A. No. No compensation."

589, line 6:

"Q. Did you have any telephone conversation with Wintershal in 1965? A. It is possible.

"Q. In 1966? A. I don't remember. I know that in beginning I was trying many times, we were discussing on the telephone about shipping that don't go through. After that was—I wanted to sell some oil in Kuwait, and that don't go through also.

"Q. In 1964 did you have any telephone conversations? A. I don't know. I don't remember."

I skip to 598, line 13.

Mr. VanVoorhis: In regard to this movie, "On The Crest Of The Dune," page 593, commencing

at line 20 to line 1 on page 594, and then beginning line 20 on page 594 through line 11 on 595—

The Court: Where?

Mr. Nizer: We can't hear you.

The Court: Off the record.

(Discussion off the record.)

(2083) Mr. VanVoorhis: We will waive that. Go ahead, Mr. Nizer.

Mr. Nizer: Then I go to—

Mr. VanVoorhis: Wait. Just a second.

(Pause)

Mr. Nizer: 598, line 13:

"Q. You told us previously in your testimony that before 1965 you were requesting that Ogbi be slowed up, pushed aside. Do you remember that testimony? A. Yes.

"Q. Now, I ask you in connection with that answer that you gave, did something happen in the spring of 1965 which made you doubt or change your mind that Ogbi should be pushed aside or terminated? A. No."

Going to page 600, line 16:

"Q. In the spring of 1965, were you pessimistic about the possibility of Occidental obtaining any oil concessions in Libya? A. No.

"Q. In the spring of '65, did you tell anyone that your efforts in Libya for Occidental had failed? A. No.

"Q. In the spring of '65, did you tell anyone that (2084) you would make one more trip to Libya, and if nothing happened, you were going to give up the whole effort on behalf of Occidental in Libya? A. No."

Go to 618, line 8. Is that all right?

Mr. Greenspoon: Wait a minute. We are still looking.

(Pause)

Mr. VanVoorhis: May I ask where you are starting?

Mr. Nizer: 618, line 8.

Mr. VanVoorhis: All right.

Mr. Nizer: Reading from 618, line 8:

"Q. After August 2, 1965, when you told Occidental you are intending to hold them responsible for damages, and all the rest in there, did you after that date intend to sue Occidental? A. No."

Skip to 622, line 11:

"Q. Did you"—

Mr. Greenspoon: Wait a minute.

(Pause)

Mr. VanVoorhis: All right.

Mr. Nizer: 622, line 11:

(2085) "Did you wait to file your claim against Occidental until after Occidental got a concession? A. Yes. I was waiting.

"Q. Before the concessions were announced, had you retained any European lawyer to sue Dr. Hammer, before they were announced? A. No."

630, from page 622, starting at line 14.

Mr. VanVoorhis: All right.

Mr. Nizer:

"Q. Did you state to anyone in October 1965 that your attorneys had told you to do nothing and wait until Occidental obtains concessions before you do anything?

"Did you ever tell that to anyone? A. I don't tell it anyone.

"Q. I read to you from D-8, Exhibit D-8 in this case, which is a letter dated October 13, 1963."—1965, that should be, Exhibit P-141—

"Counsel has given it to you. I did not ask him to, but hold it there as long as he gave it to you. Galic to Herbert Allen:

"Yesterday, the lawyers got in touch with me on account of Occidental Petroleum. They suggested that I do nothing and wait until Occidental Petroleum gets (2086) the concessions.' Was that a true statement when you made it? A. Probably advice of my lawyer. But I don't —I have a lawyer in France who, how I told you, is my friend. The same thing, when I send a telegram, I discuss with him, but he don't give concept, I got concept myself."

Mr. VanVoorhis: We are not objecting to that being read in, but I think we ought to state for the record in this instance and, if possible, other instances to come, that the question which was addressed to the witness really does not lay a foundation for subsequent contradiction because it simply says, "Did you state to anyone." Where there is contradiction, whether by letter, by writing or by the testimony orally of some witness, if the credibility of the witness is at stake, I believe that a specific foundation is required, "Did you state to so and so" or did you write?

Here the question said, "Did you state to anyone," and then this letter is produced. We are not objecting to anything that has taken place there, except that I think we ought to point out that if this is to be urged against the credibility of the witness, that he was entitled to be confronted with the letter and not to have the letter produced to impugn his credibility because he said he didn't (2087) state to anyone when he wasn't more specifically confronted with what it is that is to be adduced to contradict him.

Mr. Nizer: I believe you have forgotten. Judge VanVoorhis, the rest of the record. There will be a contradiction by letters of his statement that he didn't tell anybody, but this is a separate letter which I read.

Mr. VanVoorhis: He readily might have interpreted the word "state" to mean orally and also "to anybody" is not a proper foundation for contradiction on a collateral matter.

Mr. Nizer: He stated it in writing to someone and we will have the letters later.

Page 634—

The Court: Before you go ahead, you started at 630, line 14, and where did you go following that?

Mr. Nizer: Line 12 on 631, and I went to 634, which I will begin to read at line 18, your Honor.

Mr. Greenspoon: Wait a minute, Mr. Nizer, please.

(Pause)

(2088) Mr. Nizer: Page 634, Line 18.

"Q. Whether it was a lawyer or lawyers, as you wrote to Herbert Allen, was he or they the same people who recommended the lawyer in New York? A. That is right.

"Q. Did Herbert Allen ever reply to that letter? A. I don't think so. If he has replied, it must be here, but I don't see it."

Mr. Nizer: I skip to 646, from that place on 634, Line 24, I go to 646, Line 12.

Mr. VanVoorhis: All right.

"Q. No, listen. You are not sure at this time whether you received the Kabazi letter G30 (P159) before February 20, 1966, when the announcement was made on the radio of the awards? A. Yes.

"Q. By yes you mean you are not sure? A. I am not sure.

"Q. Did you ever ask Kabazi to send you the February 16, 1966 letter, G30 (P159)? A. No, he told me—"

Mr. Nizer: Do you want me to read on?

Mr. VanVoorhis: No, I think not.

(2089) Mr. Nizer: Shall I skip?

Mr. Greenspoon: Where are you going to?

Mr. Nizer: 648, Line 19.

Mr. VanVoorhis: All right.

Mr. Greenspoon: Go ahead.

"Q. Did you send a copy of a letter G30 (P159) February 16, 1966 to Ogbi? A. No.

"Q. Did you send a copy to Dr. Hammer? A. No.

"Q. To Occidental Petroleum Corporation? A. No."

Mr. Nizer: Next page, Line 24.

Mr. Greenspoon: I wish you would read the top of the page, please. It explains why he didn't send it.

Mr. Nizer: The top of 649, is that it?

Mr. Greenspoon: Yes.

"Q. To— A. They was present there. They don't need it.

"Q. I am not asking whether they were present. Did you send a copy? The answer is no? A. No."

Mr. Nizer: I will skip to where I intended, 649, Line 24.

(2090) "Q. After the announcement by Libya of what awards had been made, did you ask anyone to find out what concession blocks had been awarded to Occidental? A. If I ask it?

"Q. Anybody to find out what concession blocks had been given to Occidental? A. When they was announcing?

"Q. After the announcement by Libya of the awards— A. Then everybody knows, include me.

"Q. After the announcement by Libya of the awards on the radio, did you ask anyone to find out what concession

blocks had been awarded to Occidental? Did you or did you not ask anybody to do that? A. I know it myself.

"Q. Then the answer is no? A. What?"

Mr. Nizer: I go to 653, Line 10.

Mr. VanVoorhis: All right.

"Q. Now, I go back to my former question. Did you ask anybody to find out what blocks had been granted to Occidental or didn't you? A. I don't remember.

"Q. Did you ever ask Lucia to find out what blocks had been obtained? (2091) A. No.

"Q. Did you ever ask DeRovin to find out what blocks had been obtained? A. DeRovin was not there.

"Q. Did you ever ask him, is my question. A. No.

"Q. Did yo uever ask Lucia to find out what blocks had been obtained? A. No.

"Q. Did you ever ask Ogbi to check with Lucia what blocks had been obtained? A. No.

"Q. Did you ever ask DeRovin to check with Lucia what blocks had been obtained? A. No.

"Q. After February 20, did you tell anyone that Occidental had obtained oil concessions in Libya through efforts of someone else than yourself?"

Mr. VanVoorhis: Now here again is the sort of thing I referred to a moment ago. That doesn't lay any foundation for contradiction.

"A. My opinion is that it was through me—

"Q. No, no. I am not asking what your opinion was. (2092) Do you understand my question? If you don't, it will be reread. A. No."

Mr. Nizer: Skipping to Line 23 on the same page.

"Q. After the announcements"—that is "and" but it should be "after"—After the announcements of the awards on February 20th, did you tell anyone that you did not know how Occidental had won the concessions? A. That I don't know.

"Q. Did you tell anyone that you don't know how Occidental had won the concessions? Just answer it. A. No, I was not discussing with anybody.

"Q. After February 20, 1966, did you tell anybody that you were going to find out through whose efforts the concessions had been obtained for Occidental? A. No."

Mr. Nizer: I go to 660, from there at Line 15.

Mr. VanVoorhis: All right.

Mr. Nizer: Reading from 660, Line 15.

"Q. After you talked with Herbert or Charley Allen on the phone, did you tell anyone that Allen had criticized you for not knowing, that the concession could be granted (2093) on the basis of sealed competitive bids? That the concessions would be granted on the basis of sealed, competitive bids? A. No."

Mr. Nizer: Next page, Line 11—Page 661.

"Q. After February 20, 1966, did you ever tell anyone that the weak point in your suit that you were going to bring against Occidental was that Occidental had obtained concessions by tough competitive bidding rather than by negotiation? A. Will you tell me that?

"Q. Will you please repeat it?"

(Question repeated.)

"A. That they obtained concessions by—"

Mr. Nizer: And then after colloquy:

"The Witness: Weak point, what is that?

"Mr. Groman: Not strong. Impotent.

"Whereupon, the requested portion of the record was read back.

"A. No."

Mr. Nizer: Now I go to 668, reading from Page 668, Line 9.

"Q. Did you ever tell anyone that the weak point, foible, in your suit that you were going to bring against (2094) Occidental was that Occidental had obtained concessions by tough competitive bidding rather than by negotiation? A. No.

"Q. Did either Ogbi or DeRovin or anyone else tell you in London, September 1964, or any time before that, that concessions would be obtained by negotiation rather than by sealed bids? A. They was thinking that possibility exist, but it was nothing sure. But they was thinking that probably they can obtain."

I go to 672, Line 9.

Mr. VanVoorhis: We are minus 672.

Mr. Greenspoon: If I remember later on I complained that they hadn't delivered a copy of that page to us.

Mr. Nizer: Mr. Pollio will give it to you, another copy of that page if you want.

Mr. VanVoorhis: All right.

Mr. Nizer: On 672, Line 9.

"Q. Did you ever tell Herbert or Charley Allen on the phone or in writing that concessions could be awarded, could be awarded by negotiation rather than bidding? A. No.

"Q. In about March 1965, did you tell DeRovin that (2095) his claim against Occidental was better than yours? A. I don't discuss with DeRovin in March.

"Q. So the answer is no? A. No."

Next page, Line 16, Page 673.

Mr. VanVoorhis: All right.

"Q. Did you ever ask anyone outside of Libya, in April 1966, to find out whether Dr. Hammer had signed a concession contract? A. I don't need it. I know it.

"Q. So you did not ask anybody? A. No.

"Q. Did you state to anyone in April 1966 that you did not know whether Dr. Hammer signed the concession contract with the Libyan Government? A. No.

"Q. After your New York attorneys wrote to Dr. Hammer—I will give you the date, March 15, 1966—did you ask anyone in Tripoli to find out whether Occidental had gotten the concessions as a result of Ogbi's efforts? A. No."

Mr. Nizer: I skip from 674, Line 13 to 676, Line 15.

Mr. VanVoorhis: Again, I don't wish to (2096) constantly repeat, but these questions are essentially unfair cross examination by not referring more specifically to the occasion and the person or the manner, if by letter, as to which these alleged statements were made. It probably would perhaps come up more appropriately at a time when and if any alleged contradiction of these is offered.

At the same time, I feel that I should point out that these questions are far too general in cross examination of a witness under what I suppose were accepted canons of cross examination.

The Court: I want to make sure I understand your position. Is it your contention that—now referring to this particular question that counsel is about to read—that the question should have been: "Before your settlement with Occidental, Dr. Hammer—"

Mr. Nizer: It means with Occidental, with Dr. Hammer acting.

The Court: "—did you tell anyone—" instead of the word "anyone" which could have been a reference to a specific person? Is that what you had in mind?

Mr. VanVoorhis: If it is proposed to introduce contradictory evidence, the witness himself is entitled, as I understand the rules, to be confronted more (2097) specifically with the time, occasion and person before a contradiction is prepared.

The Court: All right.

Mr. Nizer: 676, Line 15.

"Q. Before your settlement with Occidental, Dr. Hammer, did you tell anyone outside of the United States that you were anxious to make a settlement because your claim was extremely bad? A. No."

Mr. Nizer: Go to 683, Line 5.

"Q. Before meeting Kabazi in Rome at that time, September 1966, did you ask Charles Allen to send you in Rome a copy of his letter arrangement with Occidental? A. I don't remember.

"Q. While in Rome, did you receive any papers from —withdraw that question.

"When you met with Kabazi in Rome in September 1966, did you show him a copy of Allen's letter arrangement with Occidental which we have called Exhibit A annexed to the complaint in this case? A. I don't remember.

"Q. You don't remember one way or the other? A. No, I don't remember."

Mr. Nizer: Skipping to Line 25 on the same (2098) page:

"Q. Did you show to Kabazi the settlement papers that you had, the release that you had with Occidental? A. If I received in the same time when I was in Grand Hotel, probably yes. But I am not sure.

"Q. Are you familiar with the name Madame Agostino? A. What country in Rome, Italy?

"Q. I am just asking you whether you know that name. A. I don't see it—if you give me some more details, then I tell you.

"Q. Did you ever correspond, write to a Madam Agostino, addressed to Madame Agostine? A. I don't know who is Madame Agostino. If you give me—

"Q. Did you ever use that name, Madame Agostino, in writing to DeRovin in Malta? A. I don't see Madame Agostino in pictures.

"Q. You mean you have no recollection of using that name? A. No.

"Q. You never used it in addressing DeRovin when he was in Malta? A. I don't know Madame Agostino. You don't (2099) give me any more detail, I don't know.

"Q. Is Madame Agostino a name you used when you wanted to write to DeRovin, and it is the same as DeRovin as a person? A. It is not address who live in Malta.

"Q. Was it a code name for DeRovin? A. No, code name not. If it is that address. But I know that I write him once when he write me in Malta. He give me some address and after that he change also there. He change him address, I think. I don't remember."

Mr. Nizer: There has been written in after that answer: "I believe Agostino is Mrs. DeRovin's maiden name."

What is the explanation for that?

Mr. Greenspoon: My recollection has been refreshed by asking others that Mrs. DeRovin's maiden name was Agostino.

"Q. Are you familiar with the name Filipino?"

I was asked to spell it and I did.

"A. No.

"Q. Did you ever use that name in writing to DeRovin? A. No.

Ferdinand Galic, E.B.T.

"Q. Does the name Filipino stand for Fernard Galic? A. No, I don't remember Filipino at all."

(2100) Mr. Nizer: I skip to 702. From 685, Line 23, to 702, Line 14.

Mr. VanVoorhis: All right.

Mr. Nizer: I ask that this document be marked Exhibit 20, it is P85 for identification.

Then skipping to the next page, Line 8. Well, before that, Line 3, Page 703.

"Q. I show you this French document and ask you whether that is a cable that you sent to DeRovin from Paris? A. I don't remember this telegram. Must be sent by—

"Q. Did you send that cable to DeRovin? A. Possibly.

"Q. The cable is signed how? A. Philipino.

"Q. You sent this and the name Filipinos, did that represent your signature? A. My signature probably he knew it that I was, what was sent from Paris. But I don't remember at all that I give him some code, Filipinos."

Mr. Nizer: Now I offer in evidence P85 with the English translation of the print.

Mr. VanVoorhis: We object to it as irrelevant.

(2101) The Court: Objection overruled.

(Defendant's Exhibit D6 was received in evidence.)

Mr. Greenspoon: Did you offer a translation, Mr. Nizer?

Mr. Nizer: Yes, with the English translation.

The Court: The translation is attached.

Mr. Greenspoon: Could we find out what your translation says because we may not agree with the translation.

Mr. Nizer: It is in the exhibit. I thought you had a copy.

Ferdinand Galic, E.B.T.

The Court: I saw the translation. That is what I was reading.

Mr. Nizer: The French and the translation.

The Court: Is there any issue about the translation?

Mr. Greenspoon: No, we don't dispute the translation. Our translation is slightly different from theirs but we don't dispute the substance of it.

I don't know which is the original.

Mr. Nizer: The one that we have annexed to the French that his Honor passed on is the one that we are offering for admission.

(2102) Now I go to 704.

The Court: Let me make sure my record is correct. You are on Page 703. How far did you go?

Mr. Nizer: I went down to Line 21 where he finished his answer. I stop there and I go to 704. Now reading at Line 7, after a cable marked G21 for identification. Reading from 704, Line 7.

"Q. I show you Exhibit G21, Defendant's Exhibit G21, and ask you if this is a cable that you sent to DeRovin, Libya Palace Hotel, Tripoli, marked urgent. Did you send that cable to DeRovin? A. It is possible.

"Q. And how did you sign that cable? A. Filipino.

"Q. How is it spelled on that?

"Instead of P-h, F-i-l-i-p-i-n-o? A. Yes.

"Q. Your name Galic doesn't appear on here at all, does it? A. I don't see."

Turning from Line 23 on 704 to 705, Line 5, having marked 22 for identification, another cable.

"Q. I show you Defendant's Exhibit G22, and ask (2102a) you if that is a cable that you sent to DeRovin? A. Probably.

"Q. And how did you sign that? A. Filipino, spelled with a P-h.

"Q. Your name Galic doesn't appear, does it? A. Doesn't appear."

(2103) Going down to line 17, on the same page—

Mr. Greenspoon: Mr. Nizer, since that document has not been offered, will you tell us where that cable is addressed to?

Mr. Nizer: Yes, just as I read it:

"DeRovin, Libya Palace Hotel, Tripoli." It is right on it.

The Court: Those are two exhibits for identification?

Mr. Nizer: Yes, your Honor.

The Court: That have not been offered in evidence and they are different from the one that was offered and received in evidence? What you offered and what was received was marked in this deposition as Exhibit G-20?

Mr. Nizer: Yes.

The Court: And you are questioning the witness about two separate cablegrams?

Mr. Nizer: What is right. I will offer them, your Honor, so they will be distinct. The substances referred to in the testimony and I was not going to offer the documents, but let me offer G-21 and G-22 in evidence, with the translations?

No objections?

Mr. Greenspoon: I don't know. I have to see them.

(2104) (Pause)

Mr. Greenspoon: I don't even think these were listed in the pre-trial order or by supplemental memorandum.

The Court: Mr. Nizer states they are self-explanatory, by reason of the questions which were put, which described the substance of them.

Mr. Nizer: I won't offer them then. If counsel objects—

Mr. Greenspoon: We are not objecting, but that is why we don't have copies, because of that, and we don't know whether the English translation is correct, because of that.

Mr. Nizer: If you want me to withdraw them, I will.

Mr. Greenspoon: I am not asking you to do anything. We can't discuss the matter now because we don't have them with us.

Mr. Nizer: If you don't object, I will mark them, to have the record clear as to what I am referring to.

Mr. Greenspoon: We don't have our English translations of these documents here, Mr. Nizer, but we can take them back and check them against our English translations.

(2105) Mr. Nizer: All right. They are marked for identification D63 and D64 for identification.

Continuing after line 11, which I have read, on page 705, I continue with line 17 on the same page, 705:

"Q. When you testified yesterday you testified as I understand it that you met DeRovin for the first time two or three months before September, 1964; is that correct? A. Approximately."

I skip to the next page, line 12:

"Q. Isn't it a fact that as early as January you were writing and corresponding with DeRovin in '64, January? A. I don't remember that."

Mr. VanVoorhis: Where is this?

Mr. Nizer: Line 12, 706.

"A. I don't remember that.

"Q. You told us yesterday that you never corresponded —you know what I mean by 'corresponded,' wrote? A. Yes.

"Q. —to DeRovin before September, '64.

"Q. Do you remember you told us that? A. I don't think that I corresponded with him.

"Q. Did you tell us that yesterday? (2106) A. I don't remember. But I think that I don't corresponded. I think how I can't remember corresponded.

"Q. Did you consider DeRovin a personal friend in 1964, January?

"In January, 1964? A. January, '64.

"Q. Did you consider him a dear friend? A. If I know it him, first impression of me was very—he given me personally good impression."

And then there is added, "when I first met him." It is written in. What is the explanation for that, Mr. Greenspoon?

Mr. Greenspoon: That was made to clarify the answer so that it is comprehensible.

Mr. Nizer: Skipping, on the same page, to line 23:

"Q. When you first met him, as you testified, in a few months"—

Mr. VanVoorhis: I think we should have the intervening in, as much as the question has been raised about whether he had met him by January.

Mr. Nizer: I continue at line 13, at plaintiff's request:

"Q. But I am asking you about January, not your (2107) impression in June. A. If I know him in January—

"Q. If you know him. But you said you didn't, didn't you so testify? A. I told you, a few months before we meet in London, I know him. In '64, I know him. So if you ask me date when he was in my office first time he arrive, that I cannot tell you. But anyway, I know that was in '64, I know him."

Ferdinand Galic, E.B.T.

Now, I continue with what I was going to read, line 23, page 707:

"Q. When you first met him, as you testified, in a few months before September, '64, did he become an immediate personal friend when you just met him? A. I liked him. I liked him."

Now, I mark Defendant's Exhibit G-23, a letter from Galic to DeRovin, and I have the French and an English translation—

Mr. Greenspoon: What is the number here, Mr. Nizer?

Mr. Nizer: It has not yet been marked.

I skip from the marking of that exhibit to page 710—

Mr. Greenspoon: Oh, no, I think you better (2103) read the balance. The whole point is that the letter was misdated.

Mr. Nizer: I will read it, at your request:

"Q. I show you this document written, signed F. Galic, and addressed to 'My dear friend,' and ask you whether you sent that letter on January 15, 1964, to DeRovin. A. I don't so it was in January. I know that I sent—but it was not their make mistake—

"Q. What is the date? A. Here is the date, 15 January '64. But I don't know if it the date 15 January. But I don't think so this was epoch. I was already in Libya, and I don't—so it must be '65, not '64. This letter must be '65, not '64. But it was not in this epoch. That must be mistake of the date '64.

"Q. In other words, you tell us that you believe that even though the letter— A. No. No. That is surely '65 in January. That was mistake done by secretary write.

"Q. You mean that in January 15, 1964, that it should be January 15, 1965? A. That must be right."

Do you want me to continue on?

(2109) Mr. Greenspoon: No.

Mr. Nizer: Then I skip from there to where I was going to read at page 710, line 18:

"Q. Let me read to you from page 411 of the minutes yesterday, line 11. I asked you—did you, DeRovin and Radziwill"—

Mr. VanVoorhis: We object to it as irrelevant and immaterial.

Mr. Nizer: Pardon me, your Honor, a second.

(Pause)

Mr. Nizer: May I go back, in order to clarify this? I think I cut a little too severely.

Page 709, the last line, line 25:

"Q. Do you recall yesterday testifying that Radziwill had nothing to do with DeRovin in obtaining work permits in Libya? A. Yes. Now I remember that his report, it was mentioned that he presented himself Radziwill.

"Q. Was your testimony yesterday incorrect? A. No, it was not incorrect. But I don't remember—it was in the police report that he—oh, he told me that—now I remember. He told me that he is the family of Radziwill and that I know Radziwill very well who is in during the war and in London, is Prince Radziwill, is (2110) friend of mine. And I was surprised when he told me that he is in the family of Radziwill.

"Now I remember when he told me once—and I ask Stash in London is DeRovin his friend, his family and he told me he don't have any French relation."

Now I skip from line 17, which I have just finished, on page 710, to 717, line 12.

Mr. VanVoorhis: All right.

Mr. Nizer: I read 717, line 12:

"Q. Why were you concealing the fact that by calling DeRovin Radziwill? A. He told me in the epoch that he is Radziwill so he know it. I know that he is not Radzi-

will, but I ask it, my friend in London. He told me I don't have it any DeRovin in the family. So mentioned him and start to tell you, and that he was the porteur of that. He start to tell you give the money to DeRovin, that m/ an when I mention Radziwill that he can be included hunself and his friend."

I turn from that line, 23, on page 717, to page 718, line 15:

"Q. In January 1965, did you write ever to DeRovin? A. If he was still there, yes.

"Q. And how—did you ever address him as Radziwill (2111) in January 1965? A. Oh, I see this letter was addressed Radziwill.

"Q. You say this letter, which of course bears the date 1964. I ask you except for this letter, which bears 1964, and which you say should have been 1965, did you ever write in January 1965, in addition to that letter, anything to DeRovin? A. It is probably.

"Q. And did you ever address him in January 1965 as Radziwill? A. On the envelope or in the letter?

"Q. On the envelope or in the letter. A. On the envelope, no, nobody will find him. In the letter, if I can help him something that he can make some money—

"Q. You would use that as a sort of a concealed way to talk to DeRovin; is that what you mean? A. Yes. Indirectly was the same name."

I go from line 17 on page 719 to page 722, line 15.

"Q. When Frottier asked you to get something done in Libya, you then addressed 'My dear friend' who was really DeRovin; that is right? A. That is right."

I go from there, which is 722, line 18, to 733, (2112) line 19.

While you are looking, gentlemen, I overlooked offering in evidence this document which I referred

to, with Radziwill in it, and so on. This is an English translation and this was G-23. I have the French and the English translation.

Mr. VanVoorhis: We object as irrelevant and immaterial.

Mr. Greenspoon: Haven't you marked it before?

Mr. Nizer: I don't think this is marked.

Mr. Greenspoon: This has not been marked before?

The Clerk: No, sir.

The Court: What page was that?

Mr. Nizer: I will give it to you in a moment, your Honor.

(Pause)

Mr. Greenspoon: We don't have our English translation here—

Mr. Nizer: That is 715. "I notice this letter, G-23, doesn't have the name of DeRovin at the top. Is that the reason"—

The Court: There is a reference to "My dear friend" in one of these questions?

Mr. Nizer: Yes, your Honor.

(2113) Mr. Greenspoon: We would like to check it against our translation, your Honor.

Mr. Nizer: Subject to that, why don't we mark it?

Mr. Greenspoon: We object to it as irrelevant and immaterial.

Mr. Nizer: If it is the translation, may I respectfully suggest we take it subject to any correction?

Mr. Greenspoon: Yes.

The Court: To whom was this letter addressed?

Mr. Nizer: To DeRovin, "My dear friend." It appears at page 708, "I ask this document be marked Defendant's Exhibit 23," and it is written, signed F. Galic and addressed to "My dear friend, and

I ask whether you sent that letter on January 15, 1964," and that got into the dispute as to whether 64 was a mistake or whether it was 65.

Mr. VanVoorhis: There is a reference to somebody named Mallory in this letter that seems to have no connection with any matter presently at issue.

Mr. Nizer: The letter has its purpose, showing that he did meet him, and the date—

The Court: According to this letter, is Radziwill a person other than DeRovin?

Mr. Nizer: He claimed the family name of Radziwill, (2114) but it was DeRovin all the time, which he admits.

The Court: This letter was addressed by Galic to DeRovin?

Mr. Nizer: To "My dear friend."

The Court: And he states in the first paragraph, "For this intervention don't forget to compensate our friend Radziwill."

Mr. Nizer: That means himself, as he testified.

Mr. VanVoorhis: Relative to some other matter, apparently, your Honor.

The Court: Well, that would all depend on what the testimony is in its entirety on this subject. All right, it may be received.

Mr. VanVoorhis: I think we skipped the part that referred to Mallory.

The Court: What page was that?

Mr. Nizer: 708, your Honor. It was marked there G-23.

(Defendant's Exhibit D65 received in evidence.)

The Court: Suppose we take our mid-afternoon recess on that note.

(Recess)

(2115) Mr. Nizer: We were at Page 733, Line 19.

"Q. Did you use, whether you call it code or not, did you use any other fictitious names? A. That is probably possible in letter—

"Q. Do you know any? Can you recall any? A. No. If you tell me, I tell you yes or no.

"Q. Do you know that there are others, but you don't remember? A. I don't know. It must be not very much. It is probably signature on a cable. If I said Philipinos or—it was no code, it was just I don't want to sign my name, that is all.

"Q. You were the one who I think used the word 'code' in connection with using another name, so I have adopted it, but I am not saying whether you arranged it in advance. My question is, have you used another name than yours? A. Probably—

"Q. Now, answer it, please. A. Probably reversed the name or something in connection with the family or something like that. That is possible. But it is—"

Mr. Nizer: I go to the next page from Line 19 on 734 to Line 9 on 735. I read to you from Page 735:

"Q. I read to you from Page 244, lines 10 through 18, in which you testified as follows—you were asked the following question: 'And when you sent letters to Khogia, did you send copies of those letters to anyone else? A. No.

'Q. So you recollection is that you never sent a copy of any correspondence that you had with Khogia to anyone else? A. Yes, I never sent.

'Q. That you did not, that you never sent? A. Right.'

"Now I ask that there be marked for identification as Defendant's Exhibit G24, a French letter, dated February 23, 1965, and an enclosure in English, dated February 23, 1965. Would you please mark that?"

Ferdinand Galic, E.B.T.

Mr. Nizer: And it was marked "Letter in French dated February 23, 1965, and enclosure in English, dated February 23, 1965, marked Defendant's Exhibit G24 for identification as of this date."

Mr. Nizer: Now I offer this and the enclosure subject to any correction of translation, if you wish to do it that way.

Mr. Greenspoon: Since this went—this wasn't in the pretrial memorandum, we don't have our English (2117) translation of things here.

Mr. Nizer: We will give you a contract copy.

Mr. Greenspoon: In any event we object to this as absolutely irrelevant, immaterial and no foundation laid.

Mr. Nizer: Well, the succeeding questions may be pertinent to that.

The Court: It may be received.

(Defendant's Exhibit D66 for identification received in evidence.)

Mr. Nizer: Now continuing on Page 736, Line 6.

"Q. I show you Exhibit G24 (D66) and ask you to read the very first sentence, that is all. Just that for the present. Although, first, excuse me, that is a letter you sent, isn't it, you wrote and sent and signed? You don't have to look at the whole letter to answer that. Did you sign and send that letter? A. Yes.

"Q. And to whom did you send that? A. Probably to DeRovin. It was discussing the deal.

"Q. You sent to DeRovin that letter and with it an English letter that you addresed to whom? A. I have to see. To Khogia.

"Q. The English letter is to Khogia? (2118) A. Yes.

"Q. And the first sentence of the French letter to DeRovin reads how? Will you read it into the record? How does it read, "Dear Friend"? A. Yes.

"Q. And that is DeRovin? A. That is DeRovin.

"Q. Now read the first sentence, just begin that. A. 'I address to you a copy of the letter what I send now to Khogia.'

"Q. Did you also tell us in your testimony that you did not have any business relationship with Khogia? Did you testify to that? A. No, I told you that I have a"—it looks like c-a-f-i.

Mr. Greenspoon: C-o-f-i.

Mr. Nizer: Here it is C-a. That was written in later?

Mr. Greenspoon: The reporter put down the word "coffee," and the correct name is "c-o-f-i."

Mr. Nizer: What does it mean?

Mr. Greenspoon: The name of a company as he told you earlier.

Mr. Nizer: I go to 739 then, please, from (2119) Line 21 on Page 737, to 739, Line 4.

"Q. How many different transactions are you discussing with Khogia there, business transactions tha you were not in Cofi, just tell me the number. You don't have to describe them each. A. I don't remember."

Mr. Nizer: Skipping from there to the last line on the same page, Line 25.

"Q. You don't know from reading it? A. No. It was many, every time discussing some other new deals, and never realize.

"Q. Did you, in connection with these deals, go to Libya? In connection with any of these, did you take them up while you were in Libya? A. No. When I go to Libya, that, my first reason was concession.

"Q. I did not ask you which was your first. Did you discuss any of these deals— A. I must discuss when I was there with them.

"Q. With Khogia and others, is that right? A. No.

"Q. And this was one of the letters that you destroyed your copy, right? (2120) A. I don't have anything.

"Q. I asked you if this was one of the letters you destroyed— A. Yes."

Mr. Nizer: Now skipping to Line 25 on the same page, the last line.

"Q. I read to you from your testimony, Page 600, Line 16.

'Q. In the spring of 1966 were you pessimistic about the possibility of Occidental obtaining any oil concessions in Libya? A. No.

'Q. In the spring of 1965, did you tell anyone that your efforts in Libya had failed? A. No.

'Q. In the spring of 1965, did you tell anyone that you would make one more trip to Libya, and if nothing happened, you were going to give up the whole effort on behalf of Occidental in Libya? A. No.'

"Do you recall making those answers to those questions?

"Q. Do you recall making those answers to those questions, Mr. Galic? A. If I recall what?

(2121) "Q. Do you remember that you gave those answers to those questions yesterday that I just read? A. Yes.

"Mr. Nizer: Now I ask this document be marked Defendant's Exhibit G25 for identification and the envelope annexed to it 25A, and that is a handwritten document marked Defendant's Exhibit G25, which is now D45 for identification, and the envelope is marked Defendant's Exhibit G25A for identification."

Mr. Nizer: And I offer these in evidence. It is a handwritten letter. I hope it is clear enough.

Mr. Greenspoon: May we see your translation?

Mr. Nizer: Yes (handing).

Mr. Greenspoon: We object on the same grounds as all the others, but we do not object to the English translation.

Mr. Nizer: It is conceded, incidentally, in the record that he wrote this himself and sent it. I will read that in a moment.

Mr. Greenspoon: We just object to its relevancy, materiality and fact that no adequate foundation is laid if this thing is supposed to be credible.

The Court: Why do you offer this letter? What is its materiality?

(2122) Mr. Nizer: It contradicts the statements, as I will soon by questioning him indicate. He wrote this letter in his own handwriting and it contradicts the testimony I just read from the record, your Honor.

The Court: You don't mean on the face of it it contradicts the testimony just read?

Mr. Nizer: It contradicts his relationship with Kabazi.

The Court: I am referring to the questions and answers on Page 741 just read that you put to the witness.

Mr. Nizer: Well, this sentence, reading from the English "I hope to be back around the 5th of May and after that I shall go to Tripoli and that will be my last trip if nothing materializes because I no longer wish to do business in the clouds."

He said that he would not—that he was going to give up on this and he translates doing business in the clouds in my questions to him.

The Court: It will be received.

Mr. VanVoorhis: The questions which are repeated that were asked of the witness at Page 741 are most certainly a very free translation of this

letter. The letter really doesn't say these implications that are all (2123) in the letter.

Mr. Greenspoon: Let's read the testimony where he was asked about it.

The Court: You may proceed.

Mr. VanVoorhis: I think it is explained farther on in the testimony.

(D45 for identification was received in evidence.)

Mr. Nizer: All right, then I continue. I read from 743, Line 24:

"Q. Did you write that letter, is the question? Read it, but I just want you to know the question. Did you write that in your own handwriting and send it? A. Yes.

"Q. And is the envelope which is Exhibit G25A (D45) also in your handwriting? A. Yes.

"Q. To whom did you send that letter? A. To DeRovin how I see there.

"Q. Let me ask you first about the envelope. This was sent to DeRovin when he was in Malta, is that correct? A. That is correct.

"Q. And his address in Malta was 80 Greenfield Street? A. That I don't know.

(2124) "Q. Well, it is your handwriting. A. Yes. Probably he must ask me to write him there.

"Q. And you address the letter on the envelope not to DeRovin, but to Madame Agostino, is that right? A. That is right.

"Q. And you were using Madame Agostino as the name for DeRovin in this envelope, is that right? A. Probably he send me that and I send him Madame Agostino.

"Q. Now you look at it and look at the second paragraph, probably, and see if this is a fair translation or maybe you want to do it yourself— A. No. Go in English.

"Q. All right. 'I am leaving for New York on business and I would like to contact Dr. Hammer because I have had no news from him for four weeks. It could be that

he has found a contact through King Hasin, II. I just learned this three days ago.'

"That is a correct translation so far? A. Yes.

"Q. 'I hope to be back around the 5th of May, and after that I shall go to Tripoli, and that will be my last trip if nothing materializes, because I no longer (2125) wish to do business in the clouds. Let me have your news and if you have learned anything, Sincerely Galic, write don't cable,' at the bottom. A. Exactly."

Mr. Nizer: Now I go to 746, the next page, Line 5.

"Q. This is a letter you destroyed? A. Yes."

Mr. Nizer: Now I skip to 768, which is another volume.

Mr. Greenspoon: Mr. Nizer, is the letter actually dated as you put it in?

The Court: What is the date of that letter?

Mr. Greenspoon: I think you ought to read that part so you can get the letter dated, April 21, 1965.

Mr. VanVoorhis: Line 10, Page—

Mr. Nizer: We can stipulate it. Is that the date on it?

Mr. Greenspoon: That is the date he said.

Mr. Nizer: April 21, '65.

Mr. Greenspoon: Would you mind reading the questions on the top of 747.

"Q. In April 1965, you were writing DeRovin, calling him Agostino on the envelope, in which you told him that (2126) you are going to make one more trip to Tripoli, but that is your last trip if nothing happens.

"Were you pessimistic about the concession matter at that time? A. Not at all. Not at all.

"Q. When you referred that you do not no longer wish to do business in the clouds, were you referring to the uncertainties of the concession business? A. No.

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"Q. Is this the only letter you ever wrote saying you were pessimistic about Occidental's chances in Libya? A. I wanted to keep DeRovin completely out from any intervention and any asking about, and I was negative to him, but I know it. He was through Lucia, through somebody, he was always following how is going deal? Not to mixing after all this reference what I have it. Not to mix him. To told him the deal, I discourage him deal. To not have him in the way for doing something.

"Q. In other words, you were lying to DeRovin? A. That is right."

Mr. Nizer: Do you want me to read anything more?

Mr. Greenspoon: Yes, read the next "Witness: That is not a lie."

(2127) The Court: That is your statement.

Mr. Greenspoon: No, the witness.

Mr. Nizer: I will read it as it occurs here.

Mr. Greenspoon: That is objected to as to form. That is not a lie.

"The Witness: That is not lie."

"Mr. Nizer: Now wait a moment.

"Mr. Greenspoon: This is a shocking piece of examination, Mr. Nizer.

"Mr. Nizer: Everything is shocking in your statement. The witness says that is right, and then you say—

"Mr. Greenspoon: The witness is very suggestible, and he doesn't understand English that well and you are taking advantage of him. Think, Mr. Galic, in the future. Just don't take his suggestions like that. Think.

"Mr. Nizer: I let the record show as to what is improper in this examination of your, even, last comment."

Mr. Greenspoon: Just continue reading the questions and answers, please.

Mr. VanVoorhis: Line 9.

Mr. Nizer: Line 9.

"Q. Let's see if we can be clear about this, Mr. Galic. You were telling me that you wrote to DeRovin that you were going to step out of this concession matter for (2128) Libya, in effect— A. Not concession. I don't mention concession.

"Q. But that is what you were referring to in your trip to Tripoli, you were referring to your efforts in connection with Occidental, were you not? A. Just a moment. Don't mix. I wanted him to have in completely out, not to mix—he have a deal with the water, with the pipe, with the everything, and I don't wanted him to ask me anything about business. I wanted to have him completely out from him. He is specially for concession, I wanted to have him out from my dealing."

Mr. Nizer: Do you want me to continue?

Mr. Greenspoon: No, I think he has answered it. Wait a moment. I think you take up this uncertainty business again.

Mr. Nizer: Do you want me to read at the bottom of 751?

Mr. Greenspoon: Yes.

Mr. Nizer: Let me start on 751 a little earlier.

The Court: From 749.

Mr. Nizer: To 751, plaintiff's request. Line 12.

"Q. But you told him you were going to quit Libya if you take one more trip and nothing materializes? (2129) A. Just to have him out of my way.

"Q. I see. So even though you knew otherwise, as you now tell us, you were misrepresenting to DeRovin, is that right, to get him out of the way?

"Will you answer? A. How I told you, I don't wanted to have him any mixed with me in any deal in Libya.

"Q. When you used the words 'I no longer wish to do business in the clouds,' what did you mean by 'business in the clouds'? A. I was starting with him and the others, how you see it, pipe, water and everything, and everything was—nothing was realized, so I don't wanted more that be bother me with anything to keep him out of everything.

"Q. Did that include the oil concessions for Occidental? A. Oil—

"Q. Did that include oil concessions for Occidental? A. I tell you, oil concession I was handling by myself.

"Q. That is not what I am asking you. A. And I am answering you.

"Q. No, you are not. Listen to me a minute, Mr. Galic. If you answer what I ask, I will not interrupt you.

(2130) "I am asking you whether, when you wanted him to stay out of pipelines and other things, you also wanted him to stay out of oil concessions in Libya for Occidental? A. DeRovin?

"Q. Yes. A. DeRovin, I wanted him also to stay away from the concessions.

"Q. And did you not mean by doing business in the clouds, that the situation on April 21, 1965, as to getting oil concessions for Occidental were very doubtful it was in the clouds, and you wanted to tell him that?

"Isn't that the meaning? A. In cloud was for everybody, just not for me, and for Dr. Hammer.

"Q. But you told him it was for all? A. I wanted DeRovin, after information when I have it from him, I wanted to have him out of my way.

"Q. Did you write any other letters to DeRovin in which you told him something you didn't really believe in order to get him out of the way? A. Probably. Probably.

"Q. How many such letters did you write to him? A. I don't know. I don't know.

(2131) "Q. Did you write to him—this is April 21, 1965—did you write to him in May 1965? A. It is possible.

"Q. Did you tell DeRovin in May 1965 that you doubted that you could get any oil concessions in Libya for Occidental? A. It is possible, very possible.

"Q. Did you tell him in May 1965 that it looked extremely doubtful to you that anything could happen for getting oil concessions in Libya for Occidental? A. I told you before, I wanted—

"Q. Is it possible? A. It is possible.

"Q. Did you tell DeRovin at any time after April 1965 that if concessions could be obtained for Occidental, you thought that Ogbi would have to get them and you couldn't? Did you say that to him? A. It is possible—I wanted to have DeRovin completely—

"Q. No, did you write him, that is my question? A. I don't know. It was possibility. My reason was I don't want to have him anything mixed with concession."

Mr. Nizer: Now I go to where I intended to read—

(2132) Mr. Greenspoon: By the way we did not ask you to read all of that.

Mr. Nizer: I thought you did. There it is anyhow. It doesn't matter.

Mr. Greenspoon: It is all right. Where do you go to?

Mr. Nizer: 768, Line 9. I will skip that. We have had more than enough of that. I beg your pardon. It is all about the Ogbi loan. We don't need that.

Mr. Greenspoon: Where were you going to, Mr. Nizer?

Mr. Nizer: I will go to 777, Line 9.

Mr. VanVoorhis: All right.

"Q. In your September 22, 1964 letter to Ogbi, you say, 'I am back from Brussels.'

"Did you see Frottier in Brussels in that occasion? A. No.

"Q. Did you see Slim in Brussels on that occasion? A. No. Slim I always see in Paris.

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"Q. Was Frottier or Slim the new contact or group that you referred to in your September 22, 1964 letter? A. I don't remember.

(2133) "Q. Let me read the sentence to you. 'As I plan to come with another group on behalf of the petrol concession.'

"Now, who were you referring to when you said 'As I plan to come with another group on behalf of the oil concession,' petrol was oil? A. I don't know. When was that written?

"Q. September 22, '64. A. Was about three or four days after meeting in London?

"Q. That is right. A. I don't remember.

"Q. Did you ever tell Dr. Hammer in September, after the London meeting, that you had a new contact that you wanted to recommend to him? A. I don't have it any.

"Q. You had no new contact? A. Company?

"Q. No. A person, any new contact. Did you tell Dr. Hammer that Frottier was a new contact who would be very useful—helpful? A. No, Frottier was no helping. Was no contact for helping in anything.

"Q. Wasn't the only recommendation in London to (2134) Dr. Hammer of any new contact Frottier by you? A. I don't think so.

"Q. Was it Slim that you made any recommendation? A. I don't think so.

"Q. Is it correct to say that the only contact you recommended after the September meeting of 1964, was in November when you recommended Frottier to Dr. Hammer? A. I really don't remember."

Mr. Nizer: Now, I offer in evidence this letter that has been quoted here, September 22, 1964. It is a handwritten letter from Galic to DeRovin in French, translated in English and enclosed is a copy from Galic to Ogbi dated September 22, 1964.

Mr. Greenspoon: What is it numbered?

Mr. Nizer: D26.

Mr. Greenspoon: Is it in the pretrial memoranda?

Mr. Nizer: No, this is another, where we quoted it but I think it might be better to have the document with his original handwriting.

Mr. Greenspoon: Do we have—may we have a translation? But we don't have a translation here.

Mr. Nizer: It is a very simple translation. You may have a copy.

(2135) Mr. Greenspoon: We don't object to the translation but we don't really see where this is relevant to anything.

Mr. Nizer: Well, if it said Frottier that he is recommending it could be another group and in view of some references we have later to a German group, it could be very highly relevant. It isn't too clear from the language but it must be spelled out together with other testimony which we are coming to.

The Court: It will be received.

(Defendant's Exhibit 67 for identification was received in evidence.)

Mr. Greenspoon: I think, your Honor, on that basis, Ogbi's reply should come in, Ogbi's reply to Galic.

The Court: To that letter?

Mr. Greenspoon: Yes, sir, Ogbi's reply to this letter.

The Court: It may be received under the doctrine of completeness.

Mr. Nizer: No objection.

Mr. Greenspoon: That is P45.

(Exhibit P45 for identification was received in evidence.)

Mr. Nizer: This is only an expression of (2136) satisfaction.

The Court: That is with respect to the $10,000.

Mr. Nizer: To the $10,000. It doesn't add anything else. But there is no objection to it.

Now I go from 779, your Honor, to 781, Line 23.

Mr. VanVoorhis: All right.

"Q. Did you ever write to DeRovin that he had a better claim against Occidental than yourself? A. I don't remember.

"Q. It is possible, isn't it? A. I don't know.

"Q. Did you ever tell him—did you write to him ever that Ogbi was the only one who might be able to get this concession and not you and not DeRovin?

"Did you ever write that to him? A. I don't remember that. He doesn't know anything about any close friend with Kabazi, that was the only way.

"Q. I am not asking you about Kabazi, Mr. Galic, would you be good enough to answer my questions any way you wish but answer my question, not something I didn't ask you.

"Now my question is, and listen to it, did you ever write to DeRovin that Ogbi might be able to (2137) obtain the concessions for Occidental but that you or DeRovin could not? A. I don't remember. If I write him, that is just how I told you to keep it is moral in good way. Otherwise—

"Q. You felt that would lift his moral?"

Mr. Greenspoon: "Moral" it says in our copy.

Mr. VanVoorhis: It means it.

Mr. Nizer: We are not in a sex case.

"Q. You felt that would lift his moral? A. I don't give any importance on that."

Mr. Nizer: I skip from there 783, Line 11, to 786, Line 18.

Mr. VanVoorhis: All right.

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"Q. Did you ask anyone in Libya, in the spring of 1965, as to whether Ogbi could be more helpful than Kabazi to obtain oil concessions? And your answer is 'no'?

"Now I ask that this document be marked Defendant's Exhibit G27 for identification and the envelope G27A.

("Letter typed in French was marked Defendant's Exhibit G27 for identification as of this date.

"Envelope was marked Defendant's Exhibit G27A for identification as of this date.")

Mr. Nizer: And the date was April 5, 1965.

"Q. Before I show you this letter, did you ever (2138) try to make DeRovin, to fool DeRovin—do you know what fool means? A. Yes.

"Q. To fool DeRovin into not going about the concessions before the bad report came in on DeRovin? A. I don't wanted DeRovin know my contact with Kabazi.

"Q. I am not asking you whether it is about Kabazi. Did you ever try to fool him about the general situation on the oil concessions before the bad report came in? A. It is possible that I just to cover my connection with Kabazi."

Mr. VanVoorhis: That is all.

Mr. Nizer: Now I go to 790, Line 13.

Mr. VanVoorhis: Go ahead.

"Q. I show you Defendant's Exhibit G27 for identification and ask you whether you signed this and whether you sent this letter to DeRovin?"

Skipping down to Line 25 to skip the colloquy.

"Q. Did you sign and send that letter to DeRovin? A. Yes.

"Q. And is the envelope in which that letter was enclosed—look at it, it is annexed to it, that sheet, (2139) is that in your handwriting? A. Yes.

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"Q. And, again, you wrote, to DeRovin, addressing him not as DeRovin or putting his name on the envelope, but just Mme. Agostino, right? A. Yes."

Mr. Nizer: Now I offer in evidence the French original, the envelope and the English translation of G27.

Mr. Greenspoon: Is that also one that is not in your pretrial memoranda? I guess we don't have an English translation of it here.

Mr. Pollio: Here is one (handing).

Mr. VanVoorhis: This is G27, 27A, isn't it?

Mr. Nizer: Yes.

Mr. Greenspoon: Subject to our checking the translation out, we have no objection to it.

Mr. Nizer: All right.

(Defendant's Exhibit D68 for identification was received in evidence.)

The Court: Where do we go to now?

Mr. Nizer: I am going from Line 11 on 791 to Line 20 on the same page.

Mr. Greenspoon: Okay.

"Q. Did you ever get an answer from DeRovin to that (2140) letter? A. I don't give any importance. What was—

"Q. I did not ask you. Mr. Galic— A. I don't know.

"Q. If I want to ask you if you give importance, from herein to save time, I will ask you whether you considered it important. But if I don't, will you just answer my question and not that? A. I don't know.

"Q. You don't know whether you got an answer? A. I don't remember.

"Q. You destroyed whatever answer you got? A. I have everything destroyed what I have DeRovin.

"Q. I read the first paragraph and ask you if this is a fair and accurate translation: 'Dear Friend, I just received your letter. I must confess that I am not really in a position to understand the position about the con-

cession, because Khogia tells me that his brother-in-law has remained and that he will remain and that everything will proceed well.'

"Now, the brother-in-law there means Kabazi? A. That is right.

"Q. First of all, did I give a fair translation, accurate translation? (2141) A. Yes.

"Q. When you say 'I must confess that I am not really in a position to understand the situation about the concession,' were you again lying to DeRovin or did you understand? A. I was keeping DeRovin from everything who he can mixed in or come back to Tripoli or with some friends to intervene for him. I wanted to have him completely out of deal.

"Q. Did he ask you that he wanted to come back to Tripoli? A. He don't ask me, but probably he want—

"Q. Not probably. Did he ever write you or ask you? A. He told me, I think, that he wants to come to Tripoli. He wants to prove that he was not—that is not true what was in the report.

"Q. I am not talking about his report. I am talking about the oil concession. When you say 'I must confess that I am not really in a position to understand the situation about the concession,' at that time did you understand the situation about the concession? A. I know it about the concession. I was better informed than anybody, even Ogbi.

"Q. Just answer my question simply. At the time that you wrote 'I don't understand the situation about the (2142) concession,' you did understand the situation, is that what you are telling us? A. Yes.

"Q. And when you said the reason that you don't understand it is that 'Khogia tells me that his brother-in-law . . .' that would mean Kabazi '. . . has remained and will remain,' was it true that Khogia had told you that or was that part of the effort to fool DeRovin? A. Probably to fool DeRovin.

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"Q. The next paragraph. 'You tell me that Ogbi is in good relations with the new president *de facto.* My opinion is that I don't know what to tell Dr. Hammer now. I shall see him tomorrow or the day after tomorrow.' First, did I translate that accurately and fairly? A. Yes.

"Q. At the time that you wrote in this letter that you don't know what to tell Dr. Hammer now, because you had to see him the next day, did you know what to tell Dr. Hammer, that you were just fooling DeRovin? A. I think Dr. Hammer was not even there.

(2143) "Q. I did not say he was there. You are going to meet him tomorrow or the day after tomorrow. A. Yes. It was just talking to DeRovin, how I told you before, I repeat you, all this baloney what I told to DeRovin, it was to keeping him away from my road to obtain the concessions.

"Q. You called what you wrote to DeRovin baloney? You know what that English word means? A. Approximately. That I wasn't not to keep him in the right way.

"Q. It is like the French word 'merde'? A. No.

"Q. When you used the word 'baloney,' didn't you mean a lot of bull? A. That is just—

"Q. Do you know what the word 'bull' means? A. 'Bull'?

"Q. Is the French word 'bobard'? A. Approximately can be used.

"Q. What does bobard—how would you define it in English? A. Something in the fog.

"Q. A lot of bunk? A. That is right.

(2144) "Q. Did you also write baloney to the Allens? A. No.

"Q. Did you write baloney to Dr. Hammer? A. No.

"Q. After the concessions were granted, you still wrote to DeRovin, didn't you? A. That, I don't know. When I stopped to write him, I don't know.

"Q. Do you know of any reason why you would want to give baloney to DeRovin after the concessions were granted? A. I was in contact with DeRovin after conces-

sion, or he call me or he write me. That, I don't remember. He asked me—

"Q. Did you still try to fool him after the concessions were granted? A. Anyway, I don't want anything to know what was done with—

"Q. Listen to my question. After the concessions were granted, did you still want to fool DeRovin about— A. Probably, yes, to—

"Just a minute. Probably yes to avoid any contact with Kabazi that I have."

I now skip from 797, line 17 [illegible]ge 800, line (2145) 14.

Mr. VanVoorhis: Where [illegible] want to go, sir?

Mr. Nizer: Page 800, line 14.

Mr. Greenspoon: We think, Mr. Nizer, you ought to start line 11, page 798, and go over to line 7 on page 799.

Mr. Nizer: Well, let me continue reading, so it will be full context. If you want it, I don't mind at all. Page 797, line 21, I will just continue, which is the next question after I stopped.

"Q. I read the next paragraph of Exhibit 20. I told you in my last letter that he became very cool because Bennahum gave him your curriculum vitae."

Now, I stop there for a minute. "I told you in my last letter that he . . ." "He" means Hammer, Dr. Hammer?

"A. Yes.

"Q. 'And gave him your curriculum vitae' means that Bennahum gave him the report, the bad report? A. That is right.

"Q. The story is a farce? A. That is right.

"Q. 'I must see with him' means Dr. Hammer, right? A. That is right.

"Q. 'I don't know what to advise now, because if (2146) Ogbi is in good relations with the new prime minister, who will have more influence, he or Khogia's brother-in-law?' A. Yes.

"Q. That is a fair translation of that paragraph? A. Yes."

Do you want me to continue?

Mr. Greenspoon: That is where we asked you to pick up, at this point, Mr. Nizer.

Mr. Nizer: Continuing, line 18, page 798:

"Q. So that on April 5, 1965, you were not only, as you said, 'I must confess I am not really in a position to understand the situation,' but you were writing to DeRovin to say that you don't know whether Ogbi or Kabazi will be in better standing in the future; is that right? A. Just a minute. If you—when is new prime minister, they change some time the ministry. If he change, Kabazi, if he is not more Kabazi Minister of Oil, so my—

"Q. Then, Ogbi might have influence? A. Then Ogbi might have influence."

Mr. Greenspoon: That is all we ask.

Mr. Nizer: I will continue:

"Q. And that wasn't baloney when you wrote that, (2147) was it? A. No. But it was—you have to tell him, but he know it very well.

"Q. You mean, even— A. He know it—

"Q. Even together with the baloney, you sometimes told him the truth? A. Just in moment I can have the peace and quiet from him, to keep him just away.

"Q. But my question was this part of the statement, as I understand you, you say, was the truth? It was accurate; is that correct?

"Is that correct, this part of the truth? A. Yes.

"Q. And so in April 1965, you were asking, you were explaining to DeRovin, your doubts concerning the situation on the concessions of oil in Libya in view of the political situation, as you explained it; is that a fair statement of it? A. I was just worry if Mazek will not put his Minister of Oil."

Well, he changed that to "Mazek." He probably meant that.

"Q. Let me read the next paragraph to you and ask you (2148) whether that is the baloney or the truth:

" 'Telephone to Lucia and cable me immediately as there is not much time to choose our route.'

"Who were you asking to telephone to Lucia? A. DeRovin."

I skip to 804, line 8.

Mr. VanVoorhis: I think we should have from where you left off, at line 20, page 800, through line 18 on page 801.

Mr. Nizer: Well, I will read that, and some more, then.

I go back, then, at plaintiff's request, and read at his behest line 21, page 800:

"Q. You were asking DeRovin to telephone Lucia and cable you immediately because you haven't much time to decide which path to take, either Ogbi or Kabazi, is that right? A. No.

"Q. Is that correct? A. It is not correct.

"Q. What route? A. That mean how I told you before, if it will be named new Minister of Petrol, that all my contact and everything what I have it up to now for me, myself, it (2149) was in question, if Kabazi will out from government, then the chance of the Ogbi are bigger Kabazi.

"Q. And who were you asking to check this, DeRovin was to check this fact for you, right, through Lucia?

Is that right? A. We ask—he was in contact all times in this, Lucia, DeRovin.

"Q. And Lucia is Ogbi's man, is that right? A. That is right.

"Q. Was that paragraph"—

Mr. Greenspoon: That is as far as we asked.

Mr. Nizer: I will continue:

"Q. Was that paragraph 'Telephone Lucia' and all the rest of that paragraph, was that a part of misleading him or was that a genuine, sincere request for information? A. I was in better part to know the truth. We wrote—

"Q. Can you answer my question? A. I was in better position to know the true situation with DeRovin, who was—

"Q. So this was more baloney to mislead him? A. This is—

"Q. That is what? A. That is probably—

(2150) "Q. Is that probably right?

"The Witness: How Khogia told me the chance of Ogbi, they are zero, if he told me the true or to reinforce my position, yes.

"Q. And in that sentence, were you sincerely telling him what Khogia told you, or was that part of the misleading effort? A. I know it better than anybody, even—

"Q. I didn't ask you what you know better. Listen to my question.

"Was that sentence which you just read, which ends up with a question mark, was that baloney or was that a sincere question? A. All my letters to DeRovin, it was all to keep him away from Libya from oil.

"Q. So this was baloney? A. It was some letter, some paragraph, it can be, but otherwise he can check always through Lucia, Lucia was his man who support him and finance him.

"Q. I didn't ask you anything about that.

"Is this last question also part of the general baloney? A. I don't remember what mood I was and how I wanted to keep him out.

(2151) "Q. By reading it you can't even tell today whether you were telling the truth or baloney? A. My principal reason was—

"Q. What is the answer to the question? A. My principal reason was to keep him away and to have him out of my road to obtain the concession. That was my principal, yes."

I continue reading from page 804, where I had intended to:

"Q. Did DeRovin cable you immediately as you requested him to do? A. I don't remember."

I marked then a cable, marked Defendant's Exhibit G-28, as of this date, and with it the English translation. It is a cable from DeRovin to Galic, April 9, 1965.

Mr. Greenspoon: Is this one that is not in the pre-trial memorandum?

Mr. Nizer: Yes. It is marked G-28, and what is the number? Is it any other number?

Mr. Pollio: It will be D69.

Mr. Nizer: It will be D69, if his Honor admits it.

Mr. Greenspoon: Is this the one Galic said he (2152) didn't remember receiving?

Mr. Nizer: Yes.

Mr. Greenspoon: If that is the one, there is no identification of it and we will object to it. I don't know which it is.

The Court: Well, from what he states on the next page—Mr. Nizer has not come to it—it is very possible that is enough to admit it in evidence.

(Defendant's Exhibit D69 received in evidence.)

Mr. Nizer: I read from page 805—I skip from the marking of it to page 805, line 6:

"Q. I show you this cable, which is G-28"—

Now D69—

"and ask you whether you received this cable from DeRovin? A. I cannot be in contact telephone with Khogia and I ask you to continue the road with him. I await cable from Khogia and I will try telephoning you.

"Q. My question is, did you get that cable in answer to your letter which we have just gone over, Exhibit 27, was that a cable which DeRovin sent to you in answer to it? A. I don't—defacto, I don't remember. But it is very possible. But I don't remember me.

"Q. Let's translate it and see if you agree it's (2153) a fair and accurate translation.

" 'Couldn't contact—' This is April 9, 1965. First let me show you the date. The letter in which you said 'Telephone to Lucia and cable me immediately,' is dated April 5, 1965, do you see that? A. Yes.

"Q. And this is dated April 9, 1965?

"And it comes from Malta to Galic in Paris; is that correct? A. That is correct.

"Q. And then it says, 'Couldn't contact Khogia telephonically, but ask you to follow only this way,' is that a correct way to translate that? A. Yes.

"Q. 'Stop. Am expecting Khogia's cable and will recable. Regards, Rovin.' A. Yes.

"Q. You remember now that you got that cable, don't you? A. I don't remember."

Mr. Greenspoon: Parenthetically, your Honor, Galic asked him to call Lucia and it is perfectly evident that this cable certainly is not a reply to D68, whatever it is a reply to.

(2154) Mr. Nizer: It is a reply.

Mr. Greenspoon: He says he telephoned to Lucia. Something seems to be out of whack.

Mr. Nizer: In Exhibit D68, the fourth paragraph reads, "Telephone to Lucia and cable me immediately as there is not much time to choose our route." In addition to that, he has in the first three paragraphs references to Khogia, "You tell me that Ogbi is in good relation with him," and so on.

Mr. Greenspoon: The cablegram says, "I couldn't contact Khogia telephonically," while Galic asked him to telephone to Lucia.

Mr. Nizer: That is the reply he made. I couldn't help that.

The Court: All right, proceed.

Mr. Nizer: Reading from page 807, line 9:

"Q. Looking at that letter, Exhibit 27, G"—

Which is now D68—

"and this cable—looking at Exhibit G-27"—

This cable is D69—

"looking at Exhibit G-27, and this cable now marked D-69, does it seem to you logical that that was an answer to your request of him to send you a cable and get in touch with Lucia? (2155) A. I told you true, I don't remember. But all my conversation, telegram and letter to DeRovin was every time to keep him just out of the deal, that is all—

"Q. And this would be another paper that if you did receive from DeRovin, you would have destroyed, isn't it? A. I don't remember."

Skipping to line 12 on the next page, 808—

The Court: At this point we seem to be going to another subject. Where did he finish, 807, line—

Mr. Nizer: 807, line—

The Court: Down to the end of the page?

Mr. Nizer: That is right.

The Court: We will go over and when we take our luncheon recess tomorrow, we will go over to Wednesday morning.

(Adjourned to Tuesday, October 2, 1973, at 10 A. M.)

(2157) October 2, 1973,
10 A. M.

Mr. Greenspoon: Yesterday, your Honor, there were some documents offered by the defendant and we at that time did not concede the translations were correct. I think the first of those was Defendant's Exhibit 63. Am I right about that?

Mr. Nizer: Yes.

Mr. Greenspoon: We concede that the translation offered by the defendant is correct, on Defendant's 63, which was formerly called DG21, and our only objection to that document is as I stated yesterday.

With respect to Defendant's 64, which was formerly DG22, we concede the correctness of that translation.

With respect to Defendant's 65, which was DG23, we concede the correctness of that translation, with the exception of one word, which I don't think makes any difference, in the third paragraph, the word "from" we think should be "for," f-o-r.

Mr. Nizer: It says, "for this intervention."

(2158) Mr. Greenspoon: "You will be able to obtain a satisfactory result from Mr. D. Mallory," you have, and we think that word is "for."

Mr. Nizer: We have "for" on my copy. We accept that.

The Court: The one submitted to me has "from." Shall I change that?

Mr. Nizer: Yes. Oh, you mean, "from $2,000"—

Mr. Greenspoon: "will be able to obtain a satisfactory result," we think the word "from" should be "for".

Mr. Nizer: We have it "for" here. So I accept that.

Mr. Greenspoon: On Defendant's Exhibit, I think, 66, which was formerly DG24, we concede the correctness of that translation. Were there any others?

Mr. Pollio: 67 and 68.

Mr. Greenspoon: 67 was DG what?

Mr. Pollio: 26.

Mr. Greenspoon: We concede the correctness of the translation of Defendant's 67, which was formerly DG26. I think the thing attached to it was already in English, wasn't it?

Mr. Pollio: Yes.

(2159) Mr. Nizer: Then you have D68, which is Exhibit 27.

Mr. Greenspoon: We have a few small differences in that one. Whether they are substantive or not, I don't know.

In the second paragraph the words, "I shall see him tomorrow or the day after tomorrow" we have translated as, "I am supposed to see him."

Mr. Nizer: I will accept that. It doesn't matter.

The Court: Shall I change that?

Mr. Nizer: Yes, your Honor. It doesn't matter. Anything else?

Mr. Greenspoon: We have no other substantive change in that, in 68.

Now, 69, that is G28, and we don't have any substantive change. The only objection we have to these, your Honor, is the objection we made yesterday.

Mr. Nizer: Your Honor, while we are in this euphoric mood, perhaps we can clean up a whole group of other translations.

D29, D31 to D40—

Mr. Greenspoon: That is one that is in your pretrial order?

(2160) Mr. Nizer: Yes.—to D40, the authentication has been conceded by you—

Mr. Greenspoon: I don't know which ones you are referring to.

Mr. Nizer: The so-called extra letters, beginning with 29 through 40.

I have here the originals, in the French handwriting of Galic, and the English translations. Suppose I offer them subject to your checking in the same way on the translations?

Mr. Greenspoon: The first point we make on that, Mr. Nizer, is that the date you have interpolated on those letters does not appear on Galic's letters, the year I am talking about. The month does appear, but not the year.

Mr. Nizer: Wherever the original has no date except the month, let's have it that way. The contents will show the date, in any event.

Mr. Greenspoon: If you give us the translations, we will tell you very quickly whether we concur or not.

Why don't you go ahead with this other material because it will take me a little time to check this stuff.

Mr. Nizer: All right.

If I may continue, it won't interrupt your work?

Mr. Greenspoon: It won't interrupt me.

(2161) Mr. Nizer: I would like to go to 811, your Honor. I think we were at 808, but I think we can save a few moment. 811, Line 9.

Mr. VanVoorhis: All right.

"Q. My question is did you write to Khogia at any time discussing the concession in Libya of oil? A. It is possible—

"Q. Involving Occidental. That is my question. A. It is possible, just for the politeness. But every time, when I go from Libya, if I—I know it through Kabazi exactly how is the situation. So if I was asking him if it something new between time I am in Paris, that is possible.

"Q. That was just to be polite? A. Polite or if it's really something new, what I don't heard generally about concession, but they was changing every—about concession, was rumor every day, every hour was rumor something new or something—"

Mr. Nizer: Continuing on the same page, I marked a cable, Defendant's Exhibit G29, which hasn't been offered yet, from DeRovin to Khogia and I offer this in evidence, please.

Mr. Greenspoon: That document was rejected by (2162) the witness as having never been seen and we object to it as being pure hearsay, irrelevant and immaterial.

Mr. Nizer: Let me read before I offer it.

Mr. Greenspoon: That is from DeRovin to Khogia.

Mr. Nizer: Let me read the answer and perhaps you won't make the objection. Line 5 on Page 812.

"Q. I show you this cable and ask you whether you learned about this cable from anyone or saw a copy of it at any time? A. That was cable addressed to—how I see from here from DeRovin to Khogia.

"Q. That is right. And my question is, did you ever see that or did you learn that that cable had been sent by DeRovin to Khogia as a result of your letter in which you asked him to do it? A. No.

"Q. You know nothing about this? A. No.

Ferdinand Galic, E.B.T.

"Q. This is the first time that you have been informed in accordance with at least what this says, that DeRovin wrote a cable to Khogia saying 'Please give some news, sincerely, Rovin,' and do you see the date of this cable, April 12, '65? A. No. I don't have any—that probably he sent (2163) that to Khogia, but I don't remember any of it."

Mr. Nizer: Now later I think we tried to connect it up but I offer this again.

Mr. VanVoorhis: We object to it on the grounds stated.

The Court: I didn't hear you.

Mr. VanVoorhis: We object to it on the grounds previously stated.

The Court: Well, the witness here doesn't acknowledge ever having seen this

Mr. Nizer: That is true, your Honor. But he says it probably was sent. Very well. I withdraw it.

The Court: I will sustain the objection to this.

Mr. Nizer: Continuing on reading on Line 10 of 813, continuing there.

"Q. I show you this Defendant's Exhibit G30 (D45) which is written in your handwriting in French, and I ask you before—I asked you before whether you ever received a reply to that letter. A. I don't remember."

Mr. Nizer: Now I mark that French document dated April 23, 1965, as G30 for identification (P112).

"Q. I show you this Defendant's Exhibit G30 (P112) (2164) and ask you what it is. What is that? A. Yes, probably I write him that.

"Q. You wrote that letter to whom? A. To DeRovin.

"Q. And isn't it DeRovin who wrote to you? A. Wrote to me. That is, DeRovin wrote this.

"Q. What is that? A. That is DeRovin who write me."

Mr. Nizer: And I skip from that, which is Line 18 on Page 814 to 821, Line 18.

Your Honor, this document D45 is in evidence. I would refer your Honor particularly to the last paragraph.

Now I offer P112. That is at Page 8 14. It was marked at Line 8 as G30. It is P112.

Mr. Greenspoon: We don't object to the document except we don't know about the translation that is being offered until I have a chance to check it. So I will put this over here for the moment.

Mr. Nizer: Yes.

(Defendant's Exhibit D70 was received in evidence.)

Mr. VanVoorhis: You are passing to Page?

Mr. Nizer: 821, Line 18.

(2165) The Court: This is a letter from whom to Galic?

Mr. Greenspoon: From Galic to DeRovin.

Mr. Nizer: He wrote that letter to DeRovin. At Page 814 he says, "Isn't it DeRovin who wrote to you?

"A. Wrote to me."

That is DeRovin who wrote this to Galic.

Reading from 821, Line 18.

"Q. Weren't you inviting DeRovin to mix in Libya by calling on him to obtain information through Lucia? A. Just to give him something that he has to do."

Mr. Nizer: Reading continuing on Page 822.

"Q. Mr. Galic, I read to you from your testimony given at this deposition, page 528, line 11, and start with line 7:

"'Q. If this worked out and Frottier was to received, if the deal were Frottier worked out, he would have

received a million dollars under this arrangement? A. That is right.

"'Q. Was Allen to receive, if he got that million dollars, was Allen to receive any portion of it? A. No.

"'Q. Did you ever tell anyone that out of (2166) the million dollars which Frottier would get, if the deal went through, that a part of it would be paid over to the Allens? A. No.'

"Q. And on Page 529, I read the following to you, line 13.

"'Q. Did you ever tell anyone that Frottier even if he got the million dollars, wouldn't keep any portion of it, it would be divided among Allen, DeRovin and yourself? A. No.'

"Now I would mark a two-page letter in French marked Defendant's Exhibit G31, which is now D46 for identification."

Mr. VanVoorhis: Of course we take the position that that is not binding on Allen & Company, but I assume that under the liberal rulings by the Court, that it is being received into evidence for its probative force—

The Court: Not binding on Allen & Company, many of the exhibits in evidence would not be binding on Hammer or the defendants in this case. If it is to be a general rule it is to be applied both ways, shouldn't it?

Mr. VanVoorhis: This is not any verbal act or integral part of the transaction contemplated by joint (2167) venture.

Mr. Nizer: I continue reading.

Mr. Greenspoon: I don't know about the translation. I haven't seen it.

Mr. Nizer: I want to lay a foundation for it. I will give it to you in a moment.

Ferdinand Galic, E.B.T.

Reading from Line 14 on Page 823.

"Q. Now, I show you this French letter, dated January 13, 1965, on your stationery, Fernand Galic, and ask you if that is your signature, and if you wrote this to DeRovin. Perhaps if you want to save time, I don't mind, Mr. Galic, I will give you a chance to read anything I go into, but right now my question is, is that your signature and did you send that letter to Mr. DeRovin on the date that it bears. A. Yes."

Mr. Nizer: I offer it in evidence, D46. I may say, your Honor, that a good many of those quotations in the English translation are referred to in the next questions.

Mr. VanVoorhis: We enter an objection to the letter. There is no foundation laid, sufficient foundation laid for it. It does not relate to any of the integral parts of the transaction involved in issue, in other words, (2168) it is not related to Galic's turning up the concessions, furthermore, the testimony by Galic himself indicates that the mention of the Allous was the error, and it was Assous that was really involved.

How these people were to share as between themselves in the possible proceeds of these contracts is in our view unrelated to the main issue.

The Court: I will receive it.

(Defendant's Exhibit D46 for identification was received in evidence.)

(2169) Mr. Nizer: I continue to read from page 823, line 23:

"Q. Now, read for the present what looks like the third paragraph beginning, 'I will show you the original of the commission letter.'

"That refers to the Frottier letter? A. That is right."

Mr. VanVoorhis: I am not sure where you are reading.

Mr. Nizer: 823. I am just continuing where I left off when I made the offer.

Mr. VanVoorhis: Very well. Why don't you read the whole question so we get it in context?

Mr. Nizer: I will.

"Q. Now, read for the present what looks like the third paragraph beginning, 'I will show you the original of the commission letter.'

"That refers to the Frottier letter? A. That is right.

"Q. 'I must deduct 25 per cent for the Allens and they will remain 750 for us, of which 500 for you and your friend and 250 for me and my associate.'

"Did I fairly translate that or accurately? A. Yes, you fairly translated that."

(2170) I skip from that line, line 11, page 824, to page 826, line 18.

Mr. VanVoorhis: I think you should read the rest of that page, 824.

Mr. Nizer: All right. At plaintiff's request, I will continue on page 824—

Mr. VanVoorhis: It is related to that, it is part and parcel of the whole thing.

Mr. Nizer: Line 12, page 824, on behalf of the plaintiff:

"Q. Does this refer to the one million dollars in the Frottier agreement, if it went through?

"That 25 per cent of that million dollars would be deducted for the Allens?

"Who are the plaintiffs in this action? A. That was—what was here, that 25 per cent to Allen that was man with who he stop to have connection, that was Assous. And Assous, he come to me, complain me and show me the bill what we was selling to Dr. Hammer, that he owed him 4.5 million lira in epoch. And so he don't want Assous do anything more about the deal."

Do you want me to read on?

Mr. VanVoorhis: Just a moment.

(Pause)

(2171) Mr. VanVoorhis: Yes, I think so. You better read on.

Mr. Nizer:

"Q. Who don't want? A. DeRovin. Assous introduce him to Ogbi. And to make him happy, I told I will give —instead to give to Assous, if I told him I give to Assous, so he will start to have it between them and me why Assous, I want to have it. And so I told I will give 250—what I have here, 250 for Allen, that was not for Allen, he don't need that. It was for Assous. I remember Assous was complainig all time after last day he never give him penny for any introducing. *De facto,* Assous was made through who Ogbi was bring to him. It was not DeRovin connection Assous. It Assous connection to Ogbi.

"Q. Have you finished? A. Yes.

"Q. First, I ask you"—

Mr. VanVoorhis: I think that is enough.

Mr. Nizer: Then I go to 826, line 18, as I had intended to read from there:

"Q. That that $250,000"—

Mr. VanVoorhis: I think so we don't have any doubt about what he means—

Mr. Nizer: You will find it connected at 826. (2172) I am trying to skip unnecessary reading.

Mr. VanVoorhis: I was looking at 826—are you reading line 18?

Mr. Nizer: Yes.

Mr. VanVoorhis: All right.

Mr. Nizer: Line 18:

"Q. That that $250,000 which you said you were deducting for the Allens was not for the Allens; is that right? A. No. That is right.

"Q. And you were again giving him baloney, is that right? A. It is not baloney, but *de facto*, he was incorrect with Assous, who introduce him Ogbi.

"Q. But you were not telling him the truth when you said you give to the Allens the 250,000? A. What?

"Q. It is not the truth that you were giving 250,000 of that to the Allens? A. No."

Now I go to 830, from there, that is, from line 11, page 827, to page 830, line 6:

"Q. To this day, neither of the Allens knew that you said that— (2173) A. No.

"Q. (continuing) —that a quarter of a million dollars which you would give to somebody else, you said would be given to them? A. That is right.

"Q. Did you feel that was honest with the Allens? A. It was nothing dishonest about it.

"Q. This letter is dated January 13, 1965, is that correct? A. Yes.

"Q. At that time there was no bad report yet to DeRovin, was there? A. No.

"Q. And yet, even before the bad report, you started to fool him, didn't you?"

Go to page 833—

Mr. Pollio: You didn't read the answer.

Mr. Nizer: I'm afraid there is no answer.

Mr. VanVoorhis: Yes, I think there is.

Mr. Nizer: Well, I will read it—

Mr. VanVoorhis: That is the top of page 831.

Mr. Nizer: I think you will find my connection gives it, but I will read it. I was going to go to 833, but if you want me to read—

(2174) Mr. VanVoorhis: What line?

Mr. Nizer: Line 22.

Mr. VanVoorhis: No, I think we better have the answer here.

Mr. Nizer: Let me then continue, and I go back to the bottom of page 830, line 23, and I read the question again:

"Q. And yet, even before the bad report, you started to fool him, didn't you? A. This about this Assous who bring—

"Q. No, I know what it is about according to what you tell me, but that is not my question. Will you listen to my question? A. Yes.

"Q. Even before there was a bad report on DeRovin, you started to give him baloney, didn't you? A. No, it is not baloney.

"Q. You fooled him on this, didn't you? A. He was nothing damaged. He would have his part that he will receive. He was nothing baloney."

May I go to 833 now?

Mr. VanVoorhis: I think so, but just let me read 832.

(Pause.)

(2175) Mr. VanVoorhis: All right.

Mr. Nizer: Line 22, page 833, just one question and answer:

"Q. What you said here, 25 per cent for the Allens wasn't true, was it? A. Wasn't true."

I skip to 836—

Mr. VanVoorhis: Just one second, please.

Mr. Nizer: I will wait. Line 17, page 836.

(Pause.)

Mr. VanVoorhis: I think since we have this material about the argument between these people as to how they should divide up whatever might be coming to them under these contracts—

Mr. Nizer: Do you want me to read—

Mr. VanVoorhis: I think we better go back to 832.

Mr. Nizer: All right. Where do you want me to start? I will go back to 831—

The Court: Go back to line 19, back 831.

Mr. Nizer: All right.

"Q. But if Assous had a claim against DeRovin and you weren't providing anything for Assous, couldn't Assous still have sued DeRovin? (2176) A. In anything?

"Q. You don't understand that? Let me see if I can make it clear. A. Yes.

"Q. You told us that the reason you wanted Assous to get it was that he had a claim against DeRovin?"

"Is that what you told us? A. He have it—one check—check. But was never honored from DeRovin. And when Assous showed me his trouble with DeRovin and DeRovin started not to—ask me not to see Assous, and *de facto*, through Assous I have—I have knew that he introduce him to Ogbi and when I see that, I tell, 'All right, he has to be damage and I find a way to get him his damages.'

"Q. Did you, in your explanation of why you lied in this letter when you said 'Allens,' and it wasn't for the Allens, the quarter of a million dollars, did you explain that on the ground that you thought Assous should be taken care of, should receive money because he had a claim against DeRovin? A. It's not about a claim. About his connection with DeRovin. But he *de facto*, Assous was the man who introduce everybody.

"Q. Did you tell DeRovin 'I will give $250,000 (2177) part of it to Assous'? A. No. If I told that to DeRovin, it will be trouble.

"Q. So you lied to him? A. I don't lie to him. I was—

"Q. Didn't you write that? A. Yes.

"Q. And that wasn't true, was it? A. Instead of Allen, Assous will receive this one.

"Q. What you said here, 25 per cent for the Allens wasn't true, was it? A. Wasn't true."

Do you want me to continue straight through, Judge VanVoorhis?

Mr. VanVoorhis: No, not unless you want to.

Mr. Nizer: I had intended to skip to 836, line 17:

"Q. Now I read to you a little further down in the letter. Will you see if I translate right? A. Yes.

"Q. It's the last paragraph:

'I have refused to meet your friend Mr. Assous ever since my arrival in Paris. He is mad that I am not granting him an appointment, that I have my opinion and (2178) I know you are not him. He asked me again this morning to meet him. I again refused but I told him that I received a telegram from you and that you are in Libya. He will write it to you—he will write to you since I believe that something important is involved.'

"Have I translated that accurately and fairly? A. Exactly.

"Q. So in this very letter, you are not trying to protect Assous; you were not even willing to meet Assous?

"Isn't that what you said? A. That what was there, *de facto*.

"Q. Was that also just to deceive? A. That is right. But he don't wanted that I discuss with Assous anything that he was afraid that Assous don't tell me the story that he owed him money, and that he has checked what was not honored by DeRovin. And I am the same moment I was helping Assous but he was crying to me, and I give him after that, and in between time I loan him money."

I propose to go from there, which is line 24, page 837, to 840, line 2.

Mr. VanVoorhis: All right.

Mr. Nizer:

"Q. So at the same time that you were (2179) trying to protect Assous, you were telling DeRovin that you

don't even want to meet Assous, you are refusing him appointments? A. Probably."

I propose to go from that line, line 6, to 846, line 2.

Mr. VanVoorhis: All right.

Mr. Nizer: Line 2, page 846:

"Q. I read to you from your testimony at page 543, line 21:

'Q. Did you consider in the beginning, say, of 1965, did you consider DeRovin the best judge as to how to obtain a good result for Occidental in Libya? A. No.'

"Do you remember making that answer? A. Did you consider in the beginning—

"Q. And on the next page, my next question was:

'Q. Did you ever tell DeRovin or anyone else that he was better qualified than you to obtain the best results from Occidental in Libya? A. No.'

"A. Yes."

Now, I marked as an exhibit at the examination Exhibit 32 for identification, G-32, and I qualified it (2180) on the next page, and I turn to page 847, line 7:

"Q. First, did you sign it? Just look at the signature. We will get to the reading of it. Is that your signature?"

Skipping to line 16:

"Q. And you sent it to [illegible] Rovin? A. Must be sent it."

Mr. Nizer: [illegible]er it in evidence.

Mr. VanVoorhis: I thought it said "I don't remember."

Mr. Nizer: It says "I don't remember," and then I said, "Looking at it, you mean—"

He says, "I see it. I tell you my signature is all right."

And the next question:

"Q. And you sent it to DeRovin? A. Must be sent it."

Mr. Greenspoon: What is the D number?

Mr. Nizer: I don't have a D number.

Mr. Greenspoon: Hasn't it been marked here?

Mr. Nizer: No.

Mr. Greenspoon: It wasn't in your pre-trial memorandum?

Mr. Nizer: I don't think this one was.

(2181) Mr. Greenspoon: We think this one is grossly irrelevant, your Honor. Is this January 15, 1965?

Mr. Nizer: January 15, 1965, and the questions and answers which follow, you might make objection to this.

Mr. Greenspoon: What was the number?

Mr. VanVoorhis: DG32.

Mr. Nizer: Mr. Pollio gave you a copy of the translation.

Mr. Greenspoon: No, we reject the first paragraph of your translation.

(2182) Mr. Nizer: What changes?

Mr. Greenspoon: They will be brought by the geologist upon our arrival in Tripoli.

Mr. Nizer: Upon our arrival you want to put it?

Mr. Greenspoon: Yes.

Mr. Nizer: It doesn't matter to me. I will accept yours without question. I don't think that matters. That is just an introductory paragraph.

Mr. Greenspoon: The second paragraph is okay. Third paragraph is okay. It is the only change in the translation we have. We don't see any relevance to that.

Mr. Nizer: All right.

The Court: It is received.

(Defendant's Exhibit D71 was received in evidence.)

Mr. Nizer: That was G32, your Honor.

I intend reading from 847, Line 18 (reading):

"Q. Reading the last paragraph on the first page first, I will give it in English and you tell me if it is a fair and accurate translation. A. Yes.

(2183) "Q. 'The conditions are those that I indicated to you during my last trip to Tripoli. What will be given to me and to Mr. Frottier, according to the original contract with Occidental Petroleum will be divided one-half between Mr. Frottier and myself and one-half between you and your friend.' A. Yes.

"Q. Next paragraph: 'Mr. Assous has tried to see me, but I have refused to see him. He accused me of having been influenced by you and told me that he wanted to explain to me certain things. Nevertheless, I refused any explanation, since I have enough with my own problems, and I do not have the time to deal with his problems.'

"First, is that an accurate translation? A. Yes.

"Q. In this letter, again, you wrote to DeRovin, 'My Dear Friend,' you address him. A. Yes.

"Q. And you tell him again that 'Assous has tried to see me,' but that you refused to meet him. A. Yes.

"Q. And you go on to even say that he accused you because of that. Was that a fact or not, that he tried (2184) to see you and you refused to see him? Was that the truth? A. No. I was seeing him. When he wanted to see me or telephoning—

"Q. So this was— A. But I told you between—just a moment.

"Q. Yes? A. —between Assous and DeRovin, it was row about money between them and I don't want to go in this row. And to have DeRovin, but I was thinking he very close to Ogbi, and that he is there in Libya, where

he can have the—I don't have to stay in Libya, I can have news through him, so to make them happy, I know that he give it very big importance not to see Assous, that Assous *de facto* don't tell me the story between them in financial terms what DeRovin told me that he give him 50 millions, and from Assous I hear that he borrow the money to DeRovin.

"Q. Is it part of your practice, when you want to keep people happy on both sides, to tell one story that isn't true and tell the other another story that isn't true, is that your practice? A. In this kind of deal, what was there, to not have any trouble with anybody before I don't succeeded what I want, I make them happy each—each one on each side."

(2185) Mr. Nizer: Now I skip from there to Line 12 on the same page.

The Court: Off the record for a moment.

(Discussion off the record.)

Mr. Nizer: Page 850, Line 12.

"Q. My question is in order to make DeRovin happy, you told him something that wasn't true, is that right? A. It was not true, yes and no."

Mr. Nizer: I would skip to 857, from Line 18 on Page 850, to 857, Line 2.

Mr. VanVoorhis: All right.

Mr. Nizer: Reading from 857, Line 2:

"Q. And when you testified at Page 543 of the minutes that you never said or wrote to anybody, never told anybody that DeRovin was the best judge as to how to obtain good results, the best results for Occidental, was that correct or not, that testimony? A. I don't give any importance to that, just to flattering him to have—that he has judgment. Otherwise, I give just on my judgment what is right or what is not right.

"Q. In other words, you decided when you are writing letters or talking to people whether it is a very important matter or not, you don't give importance to it, then it (2186) doesn't matter whether it is accurate or not, is that what you are telling me? A. It was nobody important. It was all intermediary there. Everybody was just broker, super-broker, and super, super-broker.

"Q. And weren't you a super-broker too?"

Mr. Nizer: I go from there—

Mr. VanVoorhis: Let's have the next question and answer.

"Q. And weren't you a super-broker too? A. No, I was there to obtain the concession."

Mr. Nizer: Any more you want me to read?

Mr. VanVoorhis: No.

Mr. Nizer: I go from there to 867, where there is a French cable marked G33, which is dated January 4, 1965. It is now marked D47 for identification.

Mr. Greenspoon: Is this that little telegram?

Mr. Nizer: Yes, that's right. It is the table. I read the translation right into the next question. If you wait a second you will have it.

Mr. Greenspoon: All right.

Mr. Nizer: Suppose I read from the top of 868, Line 2.

Mr. VanVoorhis: All right.

(2187) "Q. I show you this cable which is D47 for identification and ask you whether you sent this cable to Mr. DeRovin, General DeRovin? A. I think so. I think yes.

"Q. And if you will look at it, let me read the English of that and see if it is accurate. It says: 'Urgent, Galic, Salzberg to DeRovin Tripoli. Will be Paris tomorrow stop and fulfill your conditions stop, indicate if obtainable without submitting bids Happy New Year Galic.'

"Correct? A. Yes."

Mr. Nizer: Now I offer 47 for identification in evidence.

Mr. Greenspoon: Strangely enough we don't agree with the translation. Not that it makes any difference.

Mr. Nizer: If it doesn't make any difference why waste time?

Mr Greenspoon: "I shall be in Paris tomorrow"—

Mr. Nizer: Your witness said it was correct.

Mr. Greenspoon: I don't know whether he said it was correct or not. You say correct, yes.

Mr. Nizer: I said if that is a correct translation. If you will look at me, look at the English and see if it is accurate, and—

(2188) Mr. Greenspoon: The way he speaks English and French—

Mr. Nizer: What is the translation?

Mr. Greenspoon: We have it translated. "I shall be in Paris tomorrow, stop. I can meet your conditions, stop. Indicate whether obtainable without tender offer. Happy New Year." That is what we have. I don't know whether it makes any difference.

The Court: Does that make any difference? Doesn't it mean substantially the same thing?

Mr. Greenspoon: I think they probably mean the same thing, a bid is a tender offer.

Mr. VanVoorhis: We enter a formal objection, it is immaterial because it appears very shortly that this is related to a concession for building a road.

The Court: Appeared shortly what?

Mr. VanVoorhis: Appeared related to the building of a road.

Mr. Nizer: I am going to read that material, if you want to object to it or not, I mean to the questions and answers.

Mr. Greenspoon: That is hearsay, if it relates to the building of a road.

Mr. Nizer: At present the only thing that is (2189) offered is a cable which he says is accurately translated.

May I continue, please?

The Court: Continue.

(Defendant's Exhibit 47 for identification was received in evidence.)

Mr. Nizer: All right, I continue to read from Line 18 on Page 868.

"Q. And this referred, when you say 'if obtainable, that refers to concessions for Occidental, oil concessions for Occidental, is that right? A. That was going to be road also. It was discussed road from Tripoli to Benghazi.

"Q. You tell me that this does not refer— A. I know that I discuss with him. That he ask me about road to Tripoli, Benghazi to obtain.

"Q. I am not asking you what was discussed. I am asking you if this cable doesn't refer to oil concessions in Libya. A. I told you—

"Q. You say it does or doesn't? A. Probably it can be for a road Tripoli-Benghazi.

"Q. It probably can be for anything. You sent this. Wasn't this cable about oil concessions in Libya? (2190) A. I don't remember that."

Mr. Nizer: Now I offer to be marked first at that time a French cable dated January 12, 1965, marked Defendant's Exhibit G34.

Mr. Greenspoon: What is it marked now?

Mr. Nizer: It has no other number.

Mr. Greenspoon: It was not in the pretrial memoranda?

Mr. Nizer: That's right, it was marked G34.

Mr. Greenspoon: The one you gave me this morning to check translations on?

Mr. Nizer: And I continue reading from Line 20:

"Q. Did you send this cable on January 12, 1965, please? A. Probably.

"Q. I now read your cable to DeRovin, January 12, 1965. 'All necessary documents ready and ready to come with engineer.'

"I stop there. Who is the engineer, is that Vaughan? A. Vaughan—

"Q. January 12, 1965? Who was the engineer? A. I don't know. Probably how I told you, it can be for the road, for the road—

(2191) "Q. You don't think this applied to oil concessions? A. I don't remember now. The telegram for me now, after five years, how I know if it is for read or for—

"Q. In other words, you were doing business then on other things in— A. I was not doing business. He was proposed me all times, any times he wanted—

"Q. Who is he? A. DeRovin. He was trying to do something, just to have some money to make some money. But he doesn't have it. For moment, I was—I borrowed him two or three"—the borrowed is struck out and the word "loan" substituted—"I loaned him two or three thousand pounds.

"Q. Who was going to do the road? A. Probably some French company.

"Q. And you say this cable doesn't to the best of your recollection does not apply to oil concessions? A. I don't remember. You ask me now after five years how I can remember?

"Q. But you do say you remember it was the road or you are not sure? A. I am not sure of anything. I don't remember at all.

(2192) "Q. Did you ever come with an engineer for the road? A. I don't remember also.

"Q. I am finishing the cable. 'All these documents ready and ready to come with engineer, documents when

you say you can obtain satisfaction. Stop. Cable answer. My cable last letter. Regards. Galic.'

"That is an accurate translation? A. Yes.

"Q. Then I ask that this cable dated January 18, 1965 from Galic to DeRovin, which is G35—and you have that translation—

Mr. Greenspoon: Are you jumping to another cable now?

Mr. Nizer: There was an afterthought. I meant to offer that at that time.

Mr. Greenspoon: We object to this. It doesn't relate to this deal. It is hearsay, and not relevant.

The Court: It may or may not relate to this deal according to the witness' testimony.

Mr. Greenspoon: It is certainly irrelevant and when you push and you push and you push he told him it was a road, and I think that was the only firm statement (2193) he made. It dealt with the road he thinks.

Mr. Nizer: I think that there are other documents which do explain it was an oil concession. So perhaps if you would hold your objection until then it will be clarified.

The Court: It will be received as an exhibit, and at that point we will take our mid-morning recess, because we are going over to another cablegram dated January 19, 1965, which may involve the same problems.

(Defendant's Exhibit 72 for identification was received in evidence.)

(2194) Mr. Nizer: I offer in evidence G35 marked for identification at page 872.

The Court: We have not read anything about this one yet, have we? We finished at page 871.

Mr. Nizer: Your Honor is quite right. Then I will read at the top of 872, line 6:

"Q. Did you send this cable? A. Don't tell me anything.

"Q. Did you send the cable, is my question. Did you send that? A. I don't remember now.

"Q. You don't remember sending this? A. No. Even when I read it now, all this, I don't know at all from what was talking there.

"Q. Do you say that you will not confirm, you wouldn't say that you sent it? Not what is in it, but did you send it, is my question. A. How you can tell after five years whether I sent one cable. I send a thousand cables all over.

"Q. Doesn't looking at this tell you that you sent it? A. Don't tell me anything.

"Q. There are some things five years ago you do remeber? A. Sometimes you remember. Yesterday, I see after (2195) what you told after three minutes. So you don't remember, you excuse—you want from me that I remember after five years. After three minutes, ten times yesterday, you forget it and you excuse yourself. You want me to know after five years?

"Q. And between the day that you gave the testimony and the next day that I read it, did you remember what you had said?

When I read some testimony to you that you had given the day before, did you remember what you had said the day before in this examination? A. Mostly yes, mostly no."

Well, in view of those answers, I won't offer this.

Mr. Greenspoon: D73 for identification?

Mr. Nizer: Yes. Then we marked the cable dated February 19, 1965, G-36 for identification.

The Court: What page do you go to after that?

Mr. Nizer: I tell you, your Honor, to save time, I will not offer that either.

I go to page 875—I am going to offer the letter marked on 875, line 7.

Mr. Greenspoon: This is a cable?

Mr. Nizer: No, this is a letter. That is a (2196) letter in French dated February 20, 1965, which is now P81 for identification and was Exhibit G-37.

I read from line 11 at page 875:

"Q. Did you send that letter on the date it bears, February 20, 1965? A. Yes.

"Q. To DeRovin? A. Yes.

"Q. Thank you."

I offer this P81 in evidence.

Mr. Greenspoon: That was one not in the pretrial memorandum?

Mr. Nizer: No, it is. That is P81.

Mr. Greenspoon: That is a letter from—

Mr. Nizer: He just testified to it, that he sent it to DeRovin.

The Court: Dated February 20, 1965, a letter sent by Galic to DeRovin.

Mr. Greenspoon: May I see your translation on that, Mr. Nizer?

Mr. Nizer: Yes.

Mr. Greenspoon: I don't think this has anything to do with the case. It looks to me like it has something to do with ships and—

(2197) Mr. Nizer: No, please don't characterize it. The letter will speak for itself.

Mr. Greenspoon: We object to it. It is not relevant, it is hearsay, with some small exceptions where it deals with that matter, and that is all.

(Pause.)

Mr. Greenspoon: We don't object to it, your Honor.

Mr. VanVoorhis: We withdraw our objection.

Mr. Greenspoon: I think that is Mr. Vaughan, Mr. Nizer.

The Court: I was going to say the reference to Mr. V-o-u-g-h I take it the parties agree that probably refers to Vaughan?

Mr. Greenspoon: Yes.

Mr. Nizer: Yes, sir.

(Defendant's Exhibit D74 received in evidence.)

Mr. Nizer: Now, I continue reading the marking of the French cable dated February 28, 1965, which is already, your Honor, D62 in evidence—is that right?

Mr. Pollio: That is correct.

Mr. Nizer: And then I continue reading that French cable which is D62, French cable dated February 28, 1965. I read from page 875, line 23:

"Q. Did you send Exhibit G-38"—

(2198) Now D62—

"to DeRovin? A. Yes. In many ways I don't remember even what meaning.

"Q. I am not asking you whether you remember the contents. You acknowledge that you sent it to him? A. I can not remember when I don't know even what is in—on reading, I don't understand myself what is reading; so how I can remember.

"Q. You say you are not sure you sent that cable? A. Not that I am not sure."

The Court: Pardon me. Off the record for a moment.

(Discussion off the record.)

Mr. Nizer: Page 876, continuing, line 17:

"Q. You don't remember sending it? A. No, I don't remember.

"Q. Do you deny that you sent that document, that cable to DeRovin? A. I don't remember. I don't remember.

"Q. Let me see if you agree with the following translation:

'February 28, 1965, From Galic, Paris, to DeRovin, Tripoli. Answer me clearly whether brother-in-law agrees to take Occidental Stop If our first contact receives (2199) another company. Galic.' 'Brother-in-law' there means who, Kabazi? A. If his brother-in-law, is Khogia, not Kabazi.

"Q. If Khogia? A. If his brother-in-law. But I told you, I don't remember at all?

"Q. Does this refer to oil concessions, do you know, or to anything else? A. I don't remember.

"Q. You don't remember that, either? A. No.

"Q. Isn't it a fact that you were asking DeRovin to give you information about how the oil concession was going in this cable? A. No.

"Q. Is that the reason— A. I don't—I tell you, I even now I cannot tell you, I don't tell you at all.

"Q. Does this help to refresh your mind that you were asking DeRovin to check with Kabazi to find out what the possibilties were? A. DeRovin was not with Kabazi.

"Q. Weren't you asking DeRovin to check with Kabazi? (2200) A. He can no check with Kabazi. He was not in relation with Kabazi.

"Q. Were you representing Occidental in anything other than oil concessions? A. We was talking about buying one moment I propose them fertilizer factory in Belgium and they send the—

"Q. I am talking about in Libya. A. It was not for fertilizer, also, they working on that, also.

"Q. Wasn't that situation that you referred to something that happened in January 1965? A. I don't remember.

"Q. So, in other words, let me understand you. You are saying to me, one, that you do not even recall sending this cable, that you won't say that it is yours— A. I don't remember.

"Q. Listen to my question and you can tell me again. I just want to have it clear.

You will not confirm that this is a cable that you sent to Galic? A. I told you, I don't remember.

"Q. I mean to DeRovin? A. I don't remember.

(2201) "Q. And reading this doesn't in any way refresh your mind about it? A. Not at all."

I go to page 880, line 7—I think your Honor pointed out an error and we now have corrected it: P84 is the cable that was—

Mr. Greenspoon: That is correct, DG38 is now P84 for identification.

Mr. Nizer: That is the one that I offer. We handed up this one before for another cable and that is the one that is February 28th.

The Court: You quoted from it in questioning the witness?

Mr. Nizer: Yes, I did.

Mr. Greenspoon: We have no objection to it.

(Defendant's Exhibit D75 for identification received in evidence.)

Mr. Nizer: I read from page 880, line 7:

"Q. In this deposition you testified at page 581 as follows, line 4:

'Q. Did Dr. Hammer tell you that in view of the bad report concerning DeRovin he was no longer interested in having any arrangement with DeRovin? Did he tell you that in substance? (2202) A. No.'

Page 583, line 8:

"'Q. Did you ever tell DeRovin that Dr. Hammer was going to terminate his agreement because of the report he

had received concerning DeRovin? Did you tell that to DeRovin? A. No.'

"Mr. Nizer: Now, I ask that there be—I ask that this French letter be marked 39."

It is a letter in French dated March 24, 1965, marked Defendant's Exhibit G39 for identification.

That is now P211 for identification.

Now reading from page 881, line 7:

"Q. My first question is, did you write and send that letter? Is that in your own handwriting? A. Yes, I think yes.

"Q. Let me read the first paragraph. This is headed 'Grand Hotel, Roma.' It is sent by Galic and it is also signed later by Khogia, but let's take the top of the letter. It is headed 'March 24, 1965, Wednesday evening. My dear friend.'"

Mr. Greenspoon: Somebody wrote that on there but that isn't Galic that wrote it on there. It is dated "Wednesday evening." We won't argue about it.

(2203) Mr. Nizer: I will finish the question:

"It is headed 'March 24, 1965, Wednesday evening. My dear friend.'

"That means DeRovin, right? A. Yes.

"Q. 'A telephone conversation was had with Dr. Hammer and he would no longer be interested if you and your name are involved. Thereupon, Khogia and I said that you would no longer intervene, but I and Khogia think of you.'

"That is an accurate translation of that first paragraph? A. Yes."

Next page:

"Q. When I asked you before whether Dr. Hammer had told you that in view of the bad report concerning

DeRovin, he was no longer interested in having any arrangement with Dr. Rovin, you said 'No.' A. That is right, also.

"Q. That is also right? A. Yes."

Go to 884, line 22.

Mr. VanVoorhis: Just a brief moment, please. (Pause.)

(2204) Mr. VanVoorhis: I think we ought to have the intervening part.

Mr. Nizer: All right. What do you want me to read?

Mr. VanVoorhis: You might just as well continue the two questions on 882 and then proceed, if you will.

Mr. Nizer: All right. Page 882—

Mr. VanVoorhis: Just for continuity, and then through 883.

Mr. Nizer: Line 9, continuing, page 882, at plaintiff's request:

"Q. In other words, when you said a telephone conversation was had with Dr. Hammer and he would no longer be interested, you weren't referring to a conversation— A. No. First—

"Q. Wait a moment. Listen to my question. A. Yes.

"Q. You were not referring to a conversation that dealt with the bad report of DeRovin and what Dr. Hammer said? A. When I have first conversation Dr. Hammer, and when I communicated Dr. Hammer the report what I see it, (2205) he smile in the beginning and then he ask me what he done and so. And I told him what we do, we have to go away from him to paid him some damages for that, that he introduce us to Ogbi.

"And that was probably after my—that was second time I talk to Dr. Hammer, when I was in Rome and when I was with Khogia in Rome, probably. And for this reason, second time, and when Dr. Hammer told me I don't wanted

to be involved with this, probably he has already report, he read over telephone. I give him just in principle the report that was. I can no give him in detail. And probably this time here in detail, and he told Bert that he don't mix no more in deal.

"But when I talk first time to Dr. Hammer, he told leave it to me. He was smiling what he done, and so on."

Mr. Nizer: Do you want me to read more?

Mr. Greenspoon: Where do you pick up?

Mr. Nizer: 884, line 22. While you are looking at that, I will offer P211 in evidence. That is that French letter with the translation which has been read. It was marked, your Honor, page 880, line 23.

Mr. Greenspoon: Could we see the translation?

Mr. VanVoorhis: Is this the letter dated (2206) March 24th—

Mr. Greenspoon: Our translation is a little different from the way it was read.

Mr. Nizer: Is it anything that requires—

Mr. Greenspoon: I don't know.

Mr. Nizer: He said it was accurate, but if you want to make a suggestion—

Mr. Greenspoon: If we could see what you are offering, it might be helpful. We have no objection to the document per se.

Mr. VanVoorhis: There is no intervening part we want read.

Line 22, page 884, I think you proceeded to.

Mr. Nizer: I will wait until his Honor finishes reading.

(Pause.)

The Court: Is there any problem on the translation?

Mr. Greenspoon: I don't know, your Honor. I have not seen their translation.

Mr. Nizer: Perhaps we can take it the same way, subject to what you want to say, and proceed, Mr. Greenspoon, and perhaps we can have it marked in the meantime.

(2206a) Mr. Greenspoon: All right, we will clear the translation later.

(Defendant's Exhibit D76 received in evidence.)

(2207) Mr. Nizer: Now I read from 884, Line 22.

"Q. Did you write this to DeRovin that you had a telephone conversation with Dr. Hammer and he didn't want to have anything more to do with DeRovin. Did you write that, is my question, to DeRovin? A. This letter, I write.

"Q. My question is not only the letter. Did you also write to him, did you tell him in this letter that you had talked with Dr. Hammer on the telephone, and he would not longer be interested if you and your name are involved? A. That is my conversation what was later on. I was always talking about the first conversation what I have with Dr. Hammer.

"Q. When were you talking of the first conversation, when I asked you this question on the examination? A. Both. I was thinking all time on the first conversation.

"Q. And you forgot about the second? A. Yes.

"Q. I see."

Mr. Nizer: Now I go from there to 887, Line 6.

Mr. VanVoorhis: All right.

(2208) "Q. The fact is, is it not, that you never spoke to Dr. Hammer on the telephone about DeRovin, the bad report of DeRovin, did you? A. What?

"Q. Isn't it a fact that you never spoke to Dr. Hammer on the telephone about DeRovin's bad report? A. The first thing what I done, when I read report, the first thing was my telephone to Los Angeles.

"Q. Did you ever tell that to DeRovin? A. No. I was talking to Dr. Hammer.

"Q. Did you tell DeRovin that you immediately reported this to Dr. Hammer? A. That I don't remember if I do.

"Q. Have you got the French document in front of you? A. Yes.

"Q. Let's read the third paragraph. I will translate it. Tell me if it is accurate. 'Klehe and Begbeder don't want to pay and as I thought Bennahum left for New York with a copy of the information. Therefore, they are afraid but as soon as I arrive in Paris I will telephone to arrange the matter. I had a shock today.'

"First, have I translated that accurately and fairly? (2209) A. Yes.

"Q. When that letter which I read says, 'and as I thought Bennahum left for New York with a copy of the information,' you were referring to the information of the bad report on DeRovin, is that correct? A. Yes.

"Q. And when you said, 'Therefore they are afraid,' you were referring to Occidental and Dr. Hammer, is that right? A. No. Probably—

"Q. Who is 'they are afraid'? A. They are afraid, the—

"Q. Klehe & Company or Dr. Hammer? A. Klehe & Company, but they have it also—

"Q. They have what also? A. I think Klehe.

"Q. Klehe? A. Yes. But they was mixed with one deal with them.

"Q. And did they also terminate with DeRovin on account of the report, Klehe & Company? A. Yes. They interrupted. They promise to give him 2000 pounds or 1000 pounds for his journey there and when they have report, they don't wanted more to—

"Q. Do with it? A. Do it."

(2210) Mr. Nizer: Now I skip down to Line 24, same page, 889.

"Q. Now, will you please answer my question, did Klehe & Company cut off DeRovin when they got this report? A. That I don't know.

"Q. You don't know? A. I suppose, but I don't know.

"Q. Didn't you just say they refused to pay him the money? A. They refuse to pay him the money for they was afraid of the report. Ask Klehe & Company if they interrupted. I don't know. They was discussing without my knowing one deal and—

"Q. Didn't you write to DeRovin that because Klehe & Company had refused to continue— A. They was afraid when they see it—when they see it they refuse it and they—

"Q. What were they afraid of? A. Of the report.

"Q. And they were afraid of dealing with him any more? A. Probably.

"Q. And when you said 'I had a shock today' do you see the last part of that paragraph which I read, 'I had (2211) a shock today,' does that refer to your talk with Dr. Hammer above in the first paragraph? A. No.

"Q. What does that refer to? A. I don't remember.

"Q. Read the first paragraph to yourself, and then read the words 'I had a shock today,' and I ask you whether that doesn't make it clear to you that you were shocked by the whole thing when you talked to Dr. Hammer. A. No.

"Q. I read to you from your testimony, Page 585, Line 10.

'Did you ever try to obtain any compensation from Klehe & Company for DeRovin after the bad report? A. No.'

"Do you recall that answer? A. Yes.

"Q. I read to you again from the third paragraph: 'Therefore they are afraid,' that means Klehe and Begbeder, doesn't it? A. Yes.

"Q. 'But as soon as I arrive in Paris, I will telephone to arrange the matter.' What were you going to arrange when you got to Paris, when you were referring to (2212) Klehe and Begbeder being afraid? A. I don't know. They was afraid from the report or from—

"Q. No, we passed— A. No, he was—

"Q. We are past that. Listen to my question. My question is you say you will arrange the matter. What were you going to arrange when you got to Paris? A. That he was complaining all the time that it is not the report what they have it.

"Q. What were you going to arrange? A. To see it if—how he told me that I am completely innocent, that is completely—everything is air, I am—

"Q. In other words, what you were going to arrange— A. To see, to ask—

"Q. To see if the report is true? A. If report is true.

"Q. In other words, you undertook, when you went to Paris, by 'arrange the matter,' to check into the report to find out if it is true, is that right? Is that correct? A. I was reasking Klehe if it is really true what the report what he has. But he was denied by DeRovin. He told me this—it is true, the report, and it is very (2213) confidential what I give you. But is true, this report.

"Q. Did you attempt to get Klehe to pay DeRovin? Did you go there to see if they would still pay him? Is your answer yes? A. What?

"Q. My last question was—will you read it back before counsel's objection?

"(The question was read.)

"A. No, I don't remember that I intervene to pay. I can no force Klehe to pay something or to give him some money.

"Q. I didn't ask you whether you forced. Did you try to persuade him as a friend to do it? A. Definitely after this report, definitely I will never engage me in—I wanted just to have him happy away from me, that I was afraid myself to seeing with him. So for this reason I don't—I don't think so that I—

"Q. And Koghia signed this letter by putting a postscript at the bottom, a little sentence at the bottom, didn't he? A. Yes.

"Q. So he was with you and signed this letter at the same time, is that correct? A. Yes."

(2214) Mr. Nizer: I skip to Line 19 on the same page, 894.

"Q. In June 1965, did Dr. Hammer tell you that he had no intention of submitting a bid in Libya? A. That was never—what I remember—I don't remember that he don't wanted to go in Libya. That he wanted always to go in Libya.

"Q. In June 1965 did either of the Allens, either Charles or Herbert Allen, tell you that Dr. Hammer had indicated to the Allens that Occidental may not submit a bid in Libya? A. No. I don't doubt it.

"Q. In June 1965, did you tell DeRovin that in view of Dr. Hammer's intention not to proceed in Libya, you were going to ask Dr. Hammer to reimburse five or six thousand dollars for your expenses, that is what you wanted back? Did you ever tell him that? A. To keep him happy—I don't remember, but to keep it happy, it seems me, what I done it everything possible to keep him away from us.

"Q. And is it not a fact that you went to Libya in July 1965 in connection with your construction business and factory and not to work on the concessions of (2215) Occidental? A. No. That was just to—

"Q. Isn't that a fact, just tell me."

Mr. Nizer: Well, continuing on the next page, 895A.

"Q. That is a fact or not? If it is no, tell me no. That you went to Libya in July 1965 in connection with your construction business and factory and not to work in the concession of Occidental? A. No. Additionally I do it—

"Q. In addition to? A. In addition to."

Mr. Nizer: Then I asked that letter marked G40 dated June 29, 1965, which is in French, from Galic to "My Dear Colonel"—

Mr. Greenspoon: Is this in the pretrial memorandum or not?

Mr. Nizer: G40, no, it is not given another marking, and reading from Line 15 on Page 896: Rather 895A:

"Q. First I ask you whether you signed this letter and when you sent it to DeRovin. A. Yes.

"Q. Did you send it to DeRovin? A. Yes."

(2216) Mr. Nizer: I offer it in evidence.

Mr. Greenspoon: On the translation, the differences are trifles, they don't relate to substance, so we don't object to the translation as such.

(Defendant's Exhibit 77 for identification was received in evidence.)

Mr. Greenspoon: No objection.

Mr. Nizer: All right, may I continue at Page 896, Line 25.

"Q. You addressed DeRovin in this letter 'My Dear Colonel' "—

Mr. VanVoorhis: This is 895A, I think.

Mr. Nizer: I beg your pardon. 895A, Line 25.

"Q. You address DeRovin in this letter 'My Dear Colonel.' Why didn't you address him as General? A. I don't remember.

"Q. You don't remember? A. He was also colonel, general. He was colonel of something and general by a visiting card, a business card.

"Q. Did he ever tell you that you had introduced him as a general when you knew that he wasn't, and that he didn't want to embarrass you so he kept the name gen-

eral, but that he was only a colonel, did he ever tell you that? (2217) A. I don't remember."

Mr. Nizer: Skipping to Line 25 on that same page, which is now 896, beginning with a question.

"Q. My question is"—on that last line—"Did he ever tell you in any way that you had introduced him as a general to some people and that he was embarrassed because he wasn't a general, but that you had done that? A. It is possible.

"Q. And did he ever tell you that he was only a colonel but he didn't want to embarrass you by correcting you? Did he ever tell you that? A. It is possible."

Mr. Nizer: I skip down to the last line on that same page of 897, Line 25.

"Q. Did he ever tell you that he told Kabazi in order to lift you up to a pedestal, that you were the brother-in-law of Herbert Allen? Did he ever tell you that? A. To me?

"Q. Yes, did he ever tell you that? A. It is possible what he was talking all times, everything, how arrange him. I don't give any performance to that.

"Q. Did he ever tell you that Kabazi refused to meet (2218) you? A. He told me?

"Q. Yes. Did he ever tell you that Kabazi refused to meet you? A. Probably—probably he told me, but he never know it that I was—that I see him.

"Q. Did he ever write that to you? A. That is possible also, but—

"Q. Did he ever deny it? Did you ever say 'You are incorrect, Kabazi doesn't refuse to meet me'? A. I don't remember that."

Mr. Nizer: I skip from there to Page 900, Line 16. I will make it line 2, so it begins correctly.

Mr. VanVoorhis: This refers back, does it, to a letter of June 29, 1965?

Mr. Nizer: I think it will be clear when I read it. Do you want me to wait or go ahead?

Mr. Greenspoon: Go ahead.

Mr. Nizer: All right, Page 900, Line 2.

"Q. Let me read it slowly to you. 'Now, he does not even want to submit a bid in Libya. Yesterday'— A. Not submit in Libya, no bid.

"Q. It doesn't say bid in your— A. No.

(2219) "Q. All right, let's take it that way. To submit in Libya. Does it mean in Libya to you? A. It doesn't—

"Q. Does it mean that to you? A. I don't know.

"Q. 'Yesterday I had a discussion with him to obtain a compensation for my expenses which aggregate 5000 to $6000 besides the loan to Ogbi. You wrote him a letter to which according to what he told me very briefly he does not want to pay any attention.'

"Now, is—that is a fair and accurate translation? A. Yes."

Mr. Nizer: I go to 906.

Mr. VanVoorhis: I still think we ought to know what he is talking about.

Mr. Nizer: That is marked 77, so we know.

I can't skip to 906 yet. I must put this in.

I go from 900, Line 22, to 902, Line 2. I will start with Line 4 on 902:

"Q. First of all, who is he? Who is he? He does not even want. Who is he? Dr. Hammer, isn't it? Isn't that Dr. Hammer, is my question. A. Probably.

(2220) "Q. And reading it that way, now 'Now, Dr. Hammer, instead of he, does not even want to submit in Libya.'

"Does that mean submit a bid on a concession?

"Mr. Galic, will you answer my question, please? Do you want it read again to you? A. I read it here but—

"Q. And doesn't that mean submit a— A. Probably is but I don't remember. Probably is, but I don't remember.

"Q. Then you go on to say 'I had a discussion with him to obtain compensation for my expenses.' Who is him? A. Probably Dr. Hammer.

"Q. And your expenses that you wanted to collect for your work there, for what you have done, you said, aggregated 5000 to $6000 besides the loan to Ogbi. How much was the loan to Ogbi, 10,000? A. 10,000.

"Q. So that you were trying to get from him five or six and ten or fifteen or $16,000, is that right? A. No. It was asking just the—I told to DeRovin to keep DeRovin away, $5000 or $6000. If I ask for I never ask Dr. Hammer. He is here. I never ask him for anything. Just to slow down DeRovin, to have him—to have him out of the deal.

(2221) "Q. I didn't ask you about DeRovin being out of the deal. I am asking, does what you wrote mean that you wanted 5000 or 6000— A. No, I told him that I will ask from Dr. Hammer—

"Q. 'Yes. I had a discussion with him.' Didn't you say that, 'I had a discussion with Dr. Hammer to obtain a compensation'? A. Yes.

"Q. So in that discussion you were asking for $5000 or $6000 and the loan to Ogbi 10,000, is that right? A. Yes.

"Q. Then you say, 'You wrote him a letter.' That means DeRovin write a letter to Dr. Hammer, right? A. Yes.

"Q. 'Him' is Hammer? A. Yes.

"Q. You wrote him a letter and the rest of it means he doesn't want to pay any attention to it, he told me, that is right? A. Yes.

"Q. Let me translate the next paragraph and see if it is accurate and fair. I will do it slowly.

'I telephoned yesterday to Allen who confirmed to me that he is financing the Iranian transaction, and (2222) that Dr. Hammer spoke to him. Dr. Hammer confirmed that he does not want to go to Libya. I tried to get a

compensation from him. He told me to come to New York and I will try to induce Dr. Hammer to pay.' Have I translated that accurately and fairly? A. Yes.

"Q. Does this refresh your mind that the day before this letter, which is June 29, 1965, you telephone and spoke to Allen on the phone? A. Yes.

"Q. Which Allen did you talk to? A. I don't talk to anyone. They told him here, I remember now, I told him that Hammer, he don't want to go to Libya, he wants to go in Iran, and that keep him out of everything to do in Libya. The same thing like this $5000 or $6000, I never ask Dr. Hammer about anything. That was just to—

"Q. In other words, the whole paragraph is false and untrue? A. It is not false. I want just to told him to doing anything in Libya.

"Q. You say you didn't telephone Allen? A. I don't telephone to Allen.

"Q. So when you wrote, 'I telephoned yesterday to (2223) Allen,' that was not true ? A. It was just to keep him from the deal in Libya.

"Q. Can you answer my question whether it is true or not? A. I answered it.

"Q. Please answer it directly. Is it true or isn't it true? Tell me yes or no. A. No. Yes—that all letter was written how you see, and Dr. Hammer is here. I never talked to Dr. Hammer about that, and I never asked for any penny of Dr. Hammer. I was financing all expenses for everybody just myself. And I never ask him one penny for me. And you will see from that that it was just done to have him away from him. That is what they told him to Iran, and told him always that he don't put his feet and implication in Libya. But we have it always through Lucia or somebody news what he is doing, Occidental who is coming, who is intervening.

"Q. Look at that paragraph beginning with 'I telephoned yesterday to Allen' and right to the end. 'He told

me to come to New York and I will try to induce Dr. Hammer to pay.' Look at that paragraph. A. Yes.

"Q. And tell me what part, if any, of that statement that you wrote is true. (2224) A. It is how I told you before, it is—

"Q. Please answer my question. We will be here—A. How I—

"Q. Mr. Galic, may I in all friendliness say to you that I will—this will only delay the matter for both of us. I want your answer, whatever it is, but don't tell me before something that does not answer by question. Please, let me see if I can explain this:

> Mr. VanVoorhis: I think you should read the colloquy, the first sentence.
>
> The Court: I read the next sentence even before you suggested it. It is another rare occasion where you gentlemen agreed there.
>
> Mr. Nizer: For once I agreed.
>
> The Court: That is in rather sharp contrast to some of these statements made by counsel, one or the other, during the course of this deposition.
>
> Go ahead.
>
> "Mr. Greenspoon: For once I agree with Mr. Nizer.

"Mr. Nizer: I want to say to you that I will not quit these questions until I have a direct answer, whatever your answer is.

(2225) "Now, I am asking you whether every statement in that paragraph is true or not. Now is it true or isn't it?

"A. No, it is not true."

> Mr. Nizer: I go to 915. I withdraw that. I beg your pardon.
>
> I would like to go—I think it will be clear enough if I begin at Line 6, 910. I better go back to 909.

I am sorry, I am trying to cut. May lose clarity. 909, Line 4:

"Q. Now take the paragraph above that, beginning with 'Now he does not even want to submit a bid in Libya,' and right to the end of 'he does not want to pay any attention.' Do you see that paragraph?"

Mr. Nizer: Now from there I would like to go to 910, because that will explain what paragraph we are talking about. Page 910, Line 6:

"Q. Beginning with that paragraph and right to the end of that paragraph answer the same question that I asked for the next one. Is everything in that paragraph that you wrote untrue? A. It's how I told you before—

"Q. First answer. Not how you told me before.

(2226) "Mr. Greenspoon: He answered. He told you yes.

"What do you want from him?

"Mr. Nizer: I want an answer.

"Q. Will you again accept counsel's answer? A. Yes.

"Q. That was all false? Untrue? A. Untrue, yes."

Mr. Nizer: Now I will go to 915, Line 23.

"Q. On the second page of this exhibit, G40 (D77) let me read in English the third paragraph slowly. A. Yes.

"Q. 'In any event I will be in New York in eight to ten days to discuss the matter with Dr. Hammer when he will be there. There is no reason why I should incur all these expenses for Dr. Hammer. If you wish I will speak also for you. I do not hope to get much, but I hope to get for each five'—"

Mr. Nizer: Continuing on Line 24:

"Q. 'I do not hope to get much, but I hope to get for each five to six thousand dollars.' Have I translated that fairly and accurately? A. Yes.

"Q. At that time was it true that you were trying (2227) to get five or six thousand dollars expenses to clean up the matter for yourself and five or six thousand dollars for DeRovin for what he had done? A. No."

Mr. Nizer: Go to 918, Line 8:

"Q. First answer my question. Is every word untrue as you wrote it? A. Yes.

"Q. The last paragraph. 'You say that I had communicated with Ogbi. You are wrong 100 per cent. Ogbi told me that he knew so many things and you knew them while you were in Tripoli. He did not want to hurt you but he did not want to continue the cooperation. It is with these words that he started talking to me. It is for you to decide—"

Mr. VanVoorhis: What page is this, please?

Mr. Nizer: 918. Continuing at Line 17.

"Q. It is for you to decide who should give a release to Dr. Hammer against payment of expenses, but I repeat to you that we cannot get more than ten to $12,000 together.

"First of all, is that a fair and accurate translation? A. Yes.

(2228) "Q. Is every word that you wrote in that paragraph also untrue? A. It is just how I told you—

"Q. No, no. A. Untrue. Untrue, this is just what—"

(2229) (Pause.)

Mr. Nizer: I skip from there—

Mr. Greenspoon: Wait a minute. He has not finished the answer. You interrupted the answer.

Mr. Nizer: Do you want me to read on? I will read.

Mr. Greenspoon: You ought to read the whole answer:

Mr. Nizer:

"Q. Now— A. Just a moment. Dr. Hammer, when I done it, settle with Dr. Hammer—

"Q. No, I am not asking you about it. A. He give to me also document to present to DeRovin.

"Q. Mr. Galic, you will have—you cannot conduct the examination, please."

Do you want me to skip or read?

Mr. VanVoorhis: We don't want any more than that, unless you do.

Mr. Nizer: I wanted to go to 920, at line 23.

Mr. VanVoorhis: All right, you can pass on, if you want to.

The Court: Off the record.

(Discussion off the record.)

(2230) Mr. Nizer: Line 23:

"Q. I read to you from page 672 of your testimony in this deposition, line 16."

Continuing to line 11, next page, 921:

"Q. 'Q. In about March 1966, did you tell DeRovin that his claim against Occidental was better than yours? A. I don't discuss with DeRovin March.'"

Well, that was the answer in the deposition, so I better read it:

"'A. I don't discuss with DeRovin.

"'Q. So the answer is "No"? A. No.'

"Now I ask that this French letter dated March 18, 1966, sent by Galic to DeRovin be marked Defendant's Exhibit G-41."

Reading from the top of page 922:

"Q. I show you this Exhibit G-41 and ask if that is in your handwriting and whether you sent that letter to DeRovin? A. Yes."

I offer it in evidence.

Mr. Greenspoon: If you will give me your translation—I have it.

(Pause.)

(2231) Mr. Greenspoon: What was that down below, G what?

Mr. Pollio: 41.

Mr. Greenspoon: Subject to the translation, which I can't seem to find at the moment, we don't object to it.

(Defendant's Exhibit D78 received in evidence.)

Mr. Greenspoon: Pardon me. I have found it now. I will check the translation.

Mr. Nizer: It is now marked D78.

(Pause.)

Mr. Greenspoon: I think there is quite a serious problem with this translation in the way that the translation has been punctuated and it makes the thing completely different from what the man was writing.

The Court: Well, of course the next few pages are on this subject and I think you can resolve this question of translation when we pick that up next. We will take our adjournment.

We stop at page 922—

Mr. Nizer: Line 8.

(Adjourned to Wednesday, October 3, 1973, at 10 A.M.)

Ferdinand Galic, E.B.T.

(2233) New York, New York.
October 3, 1973—10:00 A.M.

(Trial resumed.)

Mr. Nizer: Before offering an exhibit, perhaps, your Honor, to have the continuity, I will reread just a few questions on 921, although we were up to 922, Line 11.

"Q. In about March 1966, did you tell DeRovin that his claims against Occidental was better than yours? A. I don't discuss with DeRovin in March.
"Q. So the answer is no? A. No."

Now, we marked then the March 18, 1966 French letter by Galic to DeRovin, and this is D78, your Honor.

The Court: Where is Mr. VanVoorhis?

Mr. Greenspoon: I don't know, your Honor, but—

The Court: I have no objection if you desire to wait for him. He has always been prompt.

Mr. Greenspoon: There have been bad traffic (2234) tie-ups this morning on the subway. May I make a quick phone call, your Honor?

The Court: Yes.

(Pause.)

Mr. Greenspoon: I was asked yesterday about some translations of documents, your Honor, and I am prepared to tell you some of them today. I think the first one you gave me yesterday was D29 and we have some problems with that translation, but so far as D30 is concerned, D31 is concerned, D35 is concerned, D36 is concerned and D38 is concerned, we accepted those translations.

There may be some others that we have some minor disagreements on, but I think we can straighten them out as we go along.

Mr. Nizer: Can you tell me, perhaps, on the first one, March 20, what the variance is?

Mr. Greenspoon: Can you give me the number?

Mr. Nizer: D29.

Mr. Greenspoon: The variance is in the tense. In the second paragraph where you say "I sent third telegrams," but in the second line of that paragraph we think it reads, "Because it is not possible to do business in that manner."

(2235) Mr. Nizer: Instead of "to work in that manner"?

Mr. Greenspoon: Yes.

Mr. Nizer: I don't see any difference.

Mr. Greenspoon: "I asked him to come to Rome to deliver to him all the documentation and I am going to write to him."

Mr. Nizer: "I write to him"—

Mr. Greenspoon: "I am going to write to him," according to our translator. That is future, or whatever the tense—"I am going to write to him that he should ask his brother-in-law that one can conduct a session"—

Mr. Nizer: And the rest is all right?

Mr. Greenspoon: Yes.

Mr. Nizer: "Am going to write"?

Mr. Greenspoon: Yes. The last tense, "but no reply. Hence it is difficult to deal with serious people. However, Hammer is coming and I want to tell him what he must say."

Mr. Nizer: Instead of "and since Hammer is coming,"—

Mr. Greenspoon: "Hammer is coming and I want to tell him what he must say."

Mr. Nizer: I will give that a quick look and (2236) maybe we will agree.

The Court: Judge VanVoorhis, we decided not to go ahead with the testimony until you came.

we assumed you were delayed and you have been prompt all along.

Mr. VanVoorhis: I apologize, your Honor.

The Court: You don't have to apologize.

Mr. Greenspoon: On D32—

Mr. Nizer: What date is that?

Mr. Pollio: What about D30?

Mr. Greenspoon: That is the one we just discussed.

Mr. Nizer: No, that is 29.

Mr. Greenspoon: D30 and 31 are okay.

D32, the only change—

Mr. Nizer: That is dated July 10?

Mr. Greenspoon: July 10. The only change we have is in the second paragraph on the second page, the one that begins "There is the oil conference," and it is the last five words of that second paragraph.

Mr. Nizer: "This time I did not even ask Khogia to see him since he refused me twice."

Mr. Greenspoon: "And after this article I will not do it either."

(2237) Mr. Nizer: No, "I shall not try again."

Mr. Greenspoon: Actually, they say "I will not do it neither," and I assume they took it literally, I guess.

Mr. Nizer: No, we won't agree to that.

Mr. Greenspoon: 33, there are quite a few differences, but on 34 there is only one.

Mr. Nizer: What is this now?

Mr. Greenspoon: September 18. It is the last paragraph, second page, "Really, I do not know now what to believe"—

Mr. Nizer: Is this the September 18 letter?

Mr. Greenspoon: "Ask the Savoy whether Khogia was in Rome. Really do not know now

what to believe. I am quite upset," is the way ours reads.

Mr. Nizer: "We have completely baffled."

Mr. Greenspoon: 37 deals with—

Mr. Nizer: What date is the letter?

Mr. Pollio: December 3.

Mr. Greenspoon: Yes. Does yours read "I don't see the usefulness for me, neither Ogbi nor Kabazi"—

Mr. Nizer: Yes. "I don't see the usefulness for me, neither Ogbi or Kabazi. I am submitting my bid. Then if it goes all right good. Otherwise I don't want (2238) to invest even one centime without having counter value."

Mr. Greenspoon: All right, we will accept that. I said 38 was okay, the translation. That is as far as I got.

39 is okay.

Mr. Nizer: What date is that?

Mr. Greenspoon: It looks to me like it is June 2. This is from California, Galic to DeRovin, Galic writing from California. Is that the one that reads "I learned the truth, our Ogbi had very little, and Kabazi nothing at all that I tell you in Rome—I leave for New York and Saturday for Paris."

Mr. Nizer: Yes.

Mr. Greenspoon: 40, okay, on the translation.

Mr. Nizer: D78 will be next.

Mr. Greenspoon: That was marked for identification and we broke on that yesterday because we wanted to check the translation.

The Clerk: To my recollection, it was received.

Mr. Greenspoon: Wait a minute. We have an objection to 78.

Mr. Nizer: Page 921, Line 23, this French letter was marked, and now I ask at the top of Page 922:

"Q. I show you this Exhibit D41 and ask you if (2239) if that is in your own handwriting and whether you sent that letter to DeRovin? A. Yes."

Mr. Nizer: Now that is D78 and I offer it in evidence.

Mr. VanVoorhis: We object to it as incompetent and immaterial.

Mr. Nizer: It was marked in evidence last night.

Mr. Greenspoon: I understood we broke on this one while we were checking the translation. This, by the way, your Honor, is written after February 20, 1966, it is pure hearsay, he was not confronted with it and we object to it on all the grounds—

The Court: The very ground on which Mr. Nizer objected to so many of your documents going into evidence, that were received, with the Court indicating that if in fact they were relevant the admissibility would be considered—

Mr. Greenspoon: The essential difference here, your Honor, is this: There was no confrontation. This is apparently offered, purely and simply, for credibility purposes, without proper confrontation, no foundation, written after February 20, 1966.

(2240) The Court: If it is offered for credibility purposes, would it make any difference when it was written?

Mr. Greenspoon: Probably not, your Honor.

The Court: Received on the issue of credibility.

Mr. Greenspoon: Then there is no proper foundation laid, your Honor. We don't object to the translation.

Mr. Nizer: I don't know of any other foundation except that he wrote it in his own handwriting and sent it.

May I continue to read, your Honor?

"Q. Now, I read the next to the last short paragraph. I will read it in English. 'I believe you have a greater chance. I wish it to you. You deserve it. But believe me, this time I will not let them get away with it.'

"That is an accurate translation? A. Yes."

Mr. Nizer: I go to Page 933—

Mr. VanVoorhis: I think we better have the rest of the page.

Mr. Nizer: Do you want me to read all of the intervening—

Mr. VanVoorhis: No.

(2241) Mr. Greenspoon: We will tell you when we are through.

Mr. Nizer: I continue to read at plaintiff's request, Line 16.

"Q. When you said 'I believe you have a greater chance,' were you telling DeRovin that he had a better chance in the lawsuit than you have? A. No.

"Q. What greater chance were you referring to in that? A. That DeRovin, he has a chance, but what he have—he don't spend it any—he spent a couple of thousand dollars there and his claim will be much less what mine. But how I told him in letter here before, how you can read it. You have a translation so you see it from here that I don't want it to be taken from Occidental like stupid man and I will do all my effort now—between Tripoli and New York to put up everything—

"Q. Yes. I will read the other paragraph"—

Mr. VanVoorhis: I think that is enough.

Mr. Nizer: I will go to Page 933, Line 7—

Mr. VanVoorhis: Oh, I beg your pardon, sir, (2241a) there is one short passage there, lines 13 through 16, if you don't mind.

Perhaps you will want to read a few more questions after that.

It is all related to what you were reading about.

(2242) Mr. Nizer: I will read at your request line 13, page 923:

"Q. My question is weren't you referring by greater chance that he had a better chance in a lawsuit against Occidental than you had? A. Oh, no, no.

"Q. What did you mean when you said, 'I believe you have a great chance'? A. His claim was very small. He done it in beginning.

"Q. He had a small claim, you say? A. He has just introduced Ogbi in the deal.

"Q. Did you ever tell DeRovin that whatever you get he should get the same or that you are going to try to get the same amount for him as for yourself in any settlement, if any is made?"

Mr. VanVoorhis: That is as far as the request.

Mr. Nizer: I will continue reading:

"A. It is possible.

"Q. So when you say here, 'You have a greater chance,' didn't you mean that he had a better lawsuit than you? A. No.

"Q. On March 18, 1966, were you intending to sue Occidental? A. I don't remember in this time. March 18th?

(2243) "Q. What is the date of this letter that you are reading? A. It is March 18th here.

"Q. And were you intending to sue Occidental at that time? A. I don't remember. I was—when he receive my letter, they receive the letter I think from the lawyer 15 already, Dr. Hammer receive it, I think, the letter from my lawyer the 15 March.

"Q. So that as of March 15, 1966 you intended to sue Occidental, on your claim? A. I think—look at the letter of Koegel Rogers, what they write. I think it is the 15 March.

"Q. And on March 18, did you still say that you were going to sue Occidental? A. I don't wanted to have—how you see from here, I don't wanted to have any—that he ask me to do it altogether something. But I—for this reason I was separately and I encouraging probably you have a chance, leave, do it yourself how you want.

"Q. You were encouraging whom, DeRovin? A. DeRovin. What he introducing Ogbi, how I told you before, and for this reason he has some right. He has contract and he has—Dr. Hammer promised me also.

(2244) "Q. In March 18th when you wrote this letter"—

Mr. Greenspoon: That is not answered, Mr. Nizer.

Mr. Nizer: Then I will skip it.

Read from page 926:

"Q. My question is, Mr. Galic, did you intend when you wrote this letter, at that time, did you still intend to sue Occidental? A. I think yes. I don't remember all dates when I contact the lawyer when they write.

"Probably, yes.

"Q. And did you also intend to sue Occidental in July 7, 1965? A. From my cable what he receive from me, I told him in the cable that I will—the I don't accept.

"Q. And you intended to sue for damages? A. For damages.

"Q. And you continued that right through March 15th and 18th as this letter shows, doesn't it? A. Yes."

Now I go to 933, where I had intended to read, line 7.

Mr. Greenspoon: Wait a minute.

(Pause.)

Ferdinand Galic, E.B.T.

Mr. Nizer: 933, line 7:

(2245) "Q. At page 574 of the minutes of this proceeding, you testified as follows—I read—

"I read line 19:

'Q. Did you ever ask Khogia to talk to Kabazi to see whether he was willing to accept a German company for oil concessions with Libya? A. I don't need it.

'Q. I did not ask you whether you needed it. Did you ever do to it? A. All right.

'Q. . . . Did you ever do it? A. No.'

"Now, were those correct answers when you made them? A. I think."

I skip to 939, top of the page, line 2.

"Q. How would talking about, to DeRovin, about a German group, getting oil concessions, keep DeRovin out of Libya? A. I don't remember what you—what you talking, what was—I talked to DeRovin or writing about that. I don't remember."

Skipping to line 22 on the same page:

"Q. What was the name of the German company? (2246) A. I don't know.

"Q. You have no recollection? A. Generally speaking, probably, German company or—I don't remember.

"Q. Was Wintershal mentioned at any time? A. I don't remember."

I then marked for identification a letter, French letter, dated March 19, 1965, consisting of two pages—

The Court: What is the date?

Mr. Nizer: March 19, 1965, and it was marked G-42 at that time and is now marked D48 for identification in the pre-trial order, and I skip to line 17 on the same page, 940—

Mr. Greenspoon: Are you offering that document now?

Mr. Nizer: In a second I will.

"Q. Is that your signature, answer that? A. On the second part is my signature."

Top of page 941:

"Q. Do you recognize your signature? A. Yes, my signature, yes.

"Q. So you signed that, didn't you? A. Yes."

(2247) I offer D48 for identification, a French letter, with the English translation annexed to it, dated March 19, 1965, sent by Galic to DeRovin and addressed "My dear friend."

Mr. Greenspoon: Just one moment on the translation.

(Pause.)

Mr. Greenspoon: We will concede the translation is reasonably accurate.

Mr. VanVoorhis: Of course, we don't concede that letter says he was intervening on behalf of Wintershal.

Mr. Greenspon: Nor its admissibility.

Mr. VanVoorhis: I think the question was whether Wintershal was mentioned.

The Court: Will you read that back, please.

(Record read.)

The Court: Tell me why this isn't admissible on the issue of credibility for the purpose of impeaching the witness?

Mr. VanVoorhis: We are not objecting to it on that ground.

The Court: But Mr. Greenspoon said yes.

Mr. Greenspoon: I don't think there is anything contradictory in it, your Honor.

(2248) The Court: That is a different matter. I have had this very liberal policy of accepting almost everything that both sides offer when obviously much of the material cannot be considered by the trier of fact. In this instance you made an objection which I am suggesting is unsound legally.

What basis is there for refusing to accept this letter?

Mr. Greenspoon: I think all I said is we don't concede its admissibility.

The Court: You objected to its admissibility and I am asking on what ground. Here the cross-examiner is questioning the witness as to whether or not he had intervened on behalf of Wintershal and a letter is produced. It is true, it isn't directly contradictory, but I assume that the witness will be questioned about it.

I agree with Judge VanVoorhis' statement that directly it doesn't contradict his statement.

Mr. VanVoorhis: I think it boils down to this: the question was asked whether Wintershal was mentioned and I think that probably this letter is offered to contradict that. I simply wanted, in passing, to point out that it does not say that he intervened on behalf of Wintershal. I think perhaps on that narrow basis that (2249) it was to contradict his statement that Wintershal was not mentioned.

Mr. Nizer: There are some brief observations I would like to make. One of our defenses is that Galic in violation of his fiduciary—

The Court: Intervened on behalf of—

Mr. Nizer: Another competitor.

The Court: Let me ask you this question: There has been repeated references to this German corporation, you have questioned the witnesses about it, and indeed in the testimony yes-

terday I believe he disavowed any interest at all in that company. Other than this letter, do you have any other proof on it?

Mr. Nizer: Yes. I think—

The Court: I think we are reaching a point where we are spending a great deal of time on something that amounts to tilting with windmills. I believe you have the burden of proof on this issue. Do you agree with that?

Mr. Nizer: Yes, your Honor.

The Court: What is the evidence—

Mr. Nizer: There are several contradictions which do not merely go to impeachment, but an admission against interest and an admission of the defense. We did not (2250) ask only about Wintershal, we asked about any German company, and he now admits, in this letter, for your Honor to evaluate the extent of the admission, of course, and in view of his prior denial before he knew we had this letter in his own handwriting which I think is impressive evidence that he was representing a German company for oil concessions, and he attempted, when confronted with this letter, as your Honor will see, to claim it was on other matters such as shipping, but Kabazi had no interest in other matters, as is conceded as this goes on, and the only subject could have been oil concessions and the date indicates that he was faithlessly representing a competitor.

There is other evidence, your Honor, that one of the concessions that we applied for was given to Wintershal and that we got another one. So that, put together cumulatively, I think it spells out an impressive defense.

I don't say our defense depends on it. You also have the names of the top executives, Fox and Densal, and I will not go beyond the record on

that, but the record itself shows these were two top executives who controlled the matter of oil concessions for the Wintershal company and he was meeting with them, although he pretended he (2251) was doing so on another subject.

Finally, your Honor, his efforts that he claimed he made, Kabazi made, were really on behalf of Wintershal, as we contend, your Honor, in the High Petroleum Council. You recall the testimony that he pretended that they were all against him, which we deny—or eight were against him and he fought. What he was fighting for was to get this concession for Wintershal, in our judgment, and I think that this evidence while not conclusive—we tried to get executives of Wintershal—but for whatever it is worth in his own handwriting, it contradicts his denial that he had anything to do with a German company competing with us. I think it helps to establish—

The Court: I suppose I have to afford you a full opportunity to answer.

Mr. VanVoorhis: I will do so very briefly, your Honor.

The Court: I would ask really for what you had beyond this immediate evidence that is being offered on that particular issue. So far, there have been denials all along of any activity on behalf of Wintershal.

(2252) Mr. VanVoorhis: Your Honor will recall that one of the missions that Mr. Galic was charged with by Dr. Hammer was to try to keep track of the competition. There is nothing in this letter which says that he was acting on behalf of Wintershal, or that he was intervening for it, or anything of that sort.

The Court: Well, I agree it doesn't say so directly. I said that before when this issue came up.

Again I say that by no means is conclusive on the issue.

We will take whatever evidence there is on it.

Mr. VanVoorhis: I knew the construction that Mr. Nizer was going to put on it and I just wanted to make quite clear that that construction in our view is unwarranted.

The Court: Certainly it goes to the issue of credibility.

Mr. VanVoorhis: I am not complaining about that.

(Defendant's Exhibit 48 for identification was received in evidence.)

The Court: You can reserve your argument on this issue for an appropriate time.

Mr. Nizer: While it is before you just one brief (2253) final statement. Just VanVoorhis said it doesn't say that, the letter does say it that he applied to Khogia to find out whether Kabazi with the very many claims he was dealing with would accept the German concession.

Anyhow let's read it and see.

The Court: Let me, for my own education on this, or understanding would be a better word, the sentence relied upon reads: "I asked him to cable me whether his brother-in-law will accept a German group which is ready to make the transaction."

I take it that you gentlemen are in agreement that the "him" refers to Khogia and the "brother-in-law" refers to Kabazi?

Mr. Nizer: Right.

Mr. VanVoorhis: That would seem to be the implication, Judge.

The Court: All right.

Mr. VanVoorhis: Inasmuch as the witness was questioned whether Wintershal was mentioned at

all, I am not prepared to argue that this letter may contradict the fact of its being mentioned, but we simply contend that it doesn't show that he was intervening on behalf of Wintershal.

The Court: All right. Where are we at, gentlemen?

(2254) Mr. Nizer: Line 22, your Honor, on 939.

Mr. Polio: 941, Line 6.

The Court: Line 6 on 941.

Mr. Nizer: Correct.

"Q. Now, let me read from the last paragraph, next to the last, and I will translate, beginning with Dr. Hammer.

'Dr. Hammer will arrive on April 1st in London or in Paris and at that time he will terminate his arrangements with Ogbi and will make an arrangement with Khogia. I asked him to cable me whether his brother-in-law will accept a German group which is ready to make the transaction. I cabled him yesterday that he should come to Rome or to Paris, but I have not as yet received an answer. I am awaiting a letter concerning your tip.' Signed F. Galic.

"Is that an accurate and fair translation? A. Yes.

"Q. When you wrote 'I asked him to cable me,' who was 'him'? A. Khogia probably.

"Q. And to cable me whether his brother-in-law, who is his brother-in-law? A. Brother-in-law, probably Kabazi."

(2255) Mr. Nizer: Now I skip to 945.

Mr. VanVoorhis: I think we ought to have—

Mr. Nizer: The intervening?

Mr. VanVoorhis: Yes.

Mr. Nizer: All right, I will be glad to read it. So I go back then at plaintiff's request to 942, Line 3.

Mr. VanVoorhis: It is all closely related to what you chose to read.

"Q. So when you wrote 'I asked him,' Khogia, 'to cable me whether his brother-in-law,' that would be Kabazi, 'will accept a German group which is ready to make the transaction,' were you referring to—to what German group were you referring? A. Thyssen. Or one shipbuilder in Germany, in Hamburg. I don't remember what these two group.

"Q. You don't remember? A. What of these two group. Shipping—Thyssen has shipping company in Hamburg. And I was in both of them in connection.

"Q. And you were asking Khogia to talk to Kabazi to find out whether Kabazi would accept a German group to make that translation, right? A. Probably. But how you know in every contract I don't the shipping company in Libya, and it was in the (2256) contract, every contract was this signed—even in Occidental, you can see it, that they must use—if it is Libya flag shipping, they must use Libya ships. And that I—and that was—and I done the shipping company in Libya what was after transfer in Cafi Construction Company.

"Q. Was Wintershal one of the companies in the German group that you referred to? A. No. It was—I told you or Thyssen Hamburg Shipping group. We wanted after to put his other companies in and keep the—

"Q. You wanted who? A. To put him—

"Q. You wanted who to put it in? A. In the shipping company to put many company others, with 49 per cent and of the financing, and to have the financing, and to have the 51 per cent without putting any money.

"Q. Do you say that Elwerath was not in that group? A. In shipping group?

"Q. No. In the word German group, do you say that Elwerath was not one in that German group? A. If they —how I told you, the shipping has to be from Germany. We have the best credit—I have the best credit.

(2257) "Q. I am not asking you about all that. Just answer my question. Then you can say anything else. I won't stop you, but if you just give me an answer. A. Yes.

"Q. Do you say that Elwerath was not in the German group that you referred to in this letter? A. It was possible that it was Elwerath.

"Q. Do you say that Wintershall was not in the German group in this letter? A. I was discussing with Wintershal for all times for shipping. And I was discussing with them one or two, three times for the shipping. For putting in my ships and to putting all company what was—even some American company.

"Q. Who were you discussing that with, in Wintershal? A. All through—I was not sure that I was discussing, but I have it—connection in Zurich who they have discussions. One intermediary who was between him and me.

"Q. You didn't discuss that with any executive in Wintershal? A. About shipping? Yes.

"Q. No, not about shipping.

"Q. I am asking you now, did you have any discussion (2258) on any other subject then shipping with executives of Wintershal? A. Oh, we was discussing many things, but—

"Q. Who did you discuss the many things with, give me the names? A. Well, with Fox and Denzel."

Mr. Nizer: Now I skip to 946, Line 5.

Mr. Greenspoon: I think you ought to read the balance of that page.

Mr. Nizer: All right, I continue on Line 19 on Page 945.

"Q. And that—and was that when you went on visits, when you dropped off at their offices? A. I discussed shipping.

"Q. Did you discuss many other things than shipping when you came to their office? A. We was discussing like you, who can ask it now stock market and—

"Q. Did you discuss oil concessions in Libya with any— A. I—"

Mr. Nizer: This is where I pick up my reading, 946, Line 5.

"Q. Listen to my questions. Did you discuss the subject (2259) of oil concessions with Denzel of Wintershal? A. No. Probably I ask him what they doing, what they want to do. But they was very reserved in any answer of that.

"Q. Did you discuss oil concessions with Pitt-Fox? A. I ask him—I ask him in Libya when I see him also, but they was always very close of any answer what they doing and what they planning to do.

"Q. Did they know that you were talking to Khogia about getting in touch with Kabazi in connection with oil concessions? Didn't they know that? A. I don't remember."

Mr. Nizer: I go to 947, the next page, Line 9.

Mr. Greenspoon: Go ahead.

"Q. Did you have any discussion with either of the Allens concerning this German group? A. Never.

"Q. Did you ever discuss any German company with the Allens? A. Concession?

"Q. Oil concession? A. Never.

"Q. Did you ever discuss with the Allens anything other than oil concessions of a German group interest? (2260) A. Some other deals?

"Q. Yes. A. Some other deals, probably. But not— but I don't think so also. I don't remember that I discuss with the Allens."

Mr. Nizer: Skipping to Line 22 on the same page.

"Q. Did you ever tell DeRovin that you had discussed with the Allens the German companies or group in connection with the oil— A. DeRovin what I told, I told him all times story to keep him out. It is possible. But it is not true.

"Q. When you say it is possible, you are not sure whether you told that to DeRovin? A. To DeRovin, I don't give any importance to DeRovin. What I wrote—what I was keeping DeRovin out and I don't want DeRovin—

"Q. Is it because you didn't give it any importance that you destroyed all the correspondence with DeRovin after you got the bad report? A. I destroyed all reports from that."

Mr. Nizer: I skip from that Line 14 on Page 949 to 952, the top of the page.

"Mr. Nizer: I ask that this cable be marked, dated March 28, 1965"—

(2261) Mr. VanVoorhis: It says March 20 in the EBT.

Mr. Nizer: Dated March 20, 1965, in French, marked Defendant's Exhibit G43 and now P212.

Now I read Line 7.

"Q. Before I show you this, I ask you—I read to you in the letter you had before you, which is Exhibit D48, March 19, 1965, that you asked DeRovin to cable you. Let's see the phrase, 'I asked Khogia, him, I asked him, Khogia,' see in the last? A. Yes.

"Q. 'to cable me whether his brother-in-law will accept the German group which is ready to make the transaction.'

"Now, did you get a cable from Khogia? A. I don't know.

"Q. Did you follow up with DeRovin and ask him to see if you—if he could get you the answer? A. I don't remember.

Ferdinand Galic, E.B.T.

"Q. I show you Exhibit 43 (P212 for identification) and ask you if that is a cable you sent to DeRovin? A. I don't know.

"Q. You don't know? A. I don't remember. I read it now here and I don't remember at all about this cable."

Mr. Nizer: I skip to 954, Line 2.

(2262) "Q. Let me read the English of this and see if we agree on the translation.

'Galic Paris to DeRovin Malta. No cable from Khogia. Cable. Galic.'

"Does that indicate to you that you followed up the letter of March 19th by telling him— A. No. How—I can't remember that."

Mr. Nizer: Well, I will stop there and ask if there is any objection to the cable, the French and the English translation. I have just read it.

Mr. Greenspoon: The objection is to the date because it is not dated March 20, 1965. There is no date on it at all and the witness testified that the thing 1320 means the time that it was sent to this could have been sent a year later for all we know.

Mr. Nizer: I remove the date without going into it—wait a moment. 20-3. Well, if I remove the date then there is no objection to it?

Mr. Greenspoon: No objection to it.

Mr. Nizer: I remove the date, I strike it out.

Mr. Greenspoon: Then I think you ought to read the testimony about it where he indicates there is no date on it and so forth.

(2263) Mr. Nizer: I know. He said that 1320 means something else.

Mr. Greenspoon: 1320 means time.

The Court: He said it probably meant hours.

Mr. Nizer: Probably meant hours. Do you want me to read it?

Mr. Greenspoon: All right, we don't care.

Mr. Nizer: I will take off the date.

Mr. Greenspoon: What are you marking this?

(Defendant's Exhibit 79 (P212) was received in evidence.)

Mr. Nizer: I go to Page 960, Line 3.

Mr. VanVoorhis: It seems to us that the material commencing on page—at the bottom of Page 954, 955 is really introductory to the matter which you propose to read there at Page 960.

Mr. Nizer: All right, do you want me to read from Line 13?

Mr. VanVoorhis: I think so.

Mr. Nizer: All right, at plaintiff's request I read from 954—

Mr. VanVoorhis: About Line 18.

Mr. Nizer: Line 13, I guess, is where it starts.

Mr. VanVoorhis: All right.

(2264) "Q. I read to you from your testimony at Page 181, Line 16:

'Q. What was the conversation—' Excuse me one second. I read to you Line 16.

'Q. What was the conversation between you and Mr. Brenner? A. Mostly I was asking him about the concession number.

'Q. Which concession number? What did he tell you about that? A. He told me it was—I think they was asking—before it was officially opened so. But I was claiming—I was looking with Kabazi what concession he can give. He told me they looking for 43 in the apply. And Kabazi told me each—This time, Galic, I give—'"

Now I read from 182, Line 11 to 16, and it continues.

'A. That I don't have more direct contact. So for this reason I wanted from him more or less to know what concession they apply, to work with Kabazi.

'Q. Did he tell you? A. Yes. He told me it was 43, I don't remember. (2265) 42A & B—the concession, whatever applied.'"

Do you recall making those answers?

"A. Yes.

"Q. The time that you were saying that you had this discussion with Brenner in which he supplied to you these numbers, the blocks, was, according to these pages between June '65 February '66, and—

Mr. VanVoorhis: That is the question?

Mr. Nizer: That is the question, there is colloquy and I concluded at Line 12.

"Q. I am talking about the period of time. Page 180. I am just fixing the time for this.

'Q. Mr. Galic, after you received the cable from Mr. Hammer about July 16, 1965, and before the concessions were announced in February of 1966, did you have any conversation with Mr. Brenner? A. Yes. I have it over telephone conversation with him.

'Q. During that period of time? A. Yes.'"

Mr. Nizer: Do you want me to read on?

Mr. Greenspoon: That question doesn't get answered.

(2266) Mr. VanVoorhis: Over to 957, Line 12, I think.

Mr. Nizer: 957, Line 12.

"Q. The period of time when I asked you whether you talked to Mr. Brenner was after that July 1965 and February '66. Then we went into the discussion and I said what was the conversation between you during that period, at any time during that period—withdrawn.

"As a matter of fact, these questions were asked by Mr. Greenspoon, not by me. He fixed the time, on Page 180, and then he said 'what was the conversation between you and Mr. Brenner?'

"And you answered: 'Mostly I was asking him about the concession number.'

"That is during that period of time?"

Mr. VanVoorhis: That is the question.

Mr. Nizer: Do you want me to continue reading?

Mr. VanVoorhis: Yes, it is a little hard to decipher, but I think that what he means comes out through the words.

Mr. Nizer: Quoting again by me "Which concession number, what did he tell you about that?

'A. He told me it was—I think they was asking. He told me—'

"Now, that is during that period of time.

(2267) 'A. —before it was officially opened so. But I was claiming—I was looking with Kabazi what concession he can give.'

"The reference to 'before it was opened,' is part of that conversation, that before it was opened, he would have certain information. But the time of the conversation as fixed by Mr. Greenspoon himself in the question was between July '65 and February '65. I think it is clear from the record. We don't have to argue."

Mr. Nizer: And there is more colloquy and that is all, isn't it?

Mr. VanVoorhis: Yes.

Mr. Nizer: Then I go to Page 960, Line 3.

"Q. Isn't it a fact that before July 1965 Brenner was, as you think—you put it before, was out of the picture in Libya? A. He was not in Libya. Maybe he was still occupying himself for Occidental.

"Q. Did Dr. Hammer tell Brenner not to go to Libya, to your knowledge? A. I don't remember, now.

"Q. You testified to a conversation with him— A. I suggesting if he tell him that he go or not go, I don't know. But I suggest him.

(2268) "Q. Didn't you know that Dr. Hammer had given instructions to Brenner to stay out of Libya— A. I don't remember that.

"Q. —before July 1965? A. I don't know.

"Q. Didn't you know before July 1965 that Dr. Hammer had told before Brenner to stay out of this concession, that transaction? A. Don't remember that.

"Q. Did you ever write to DeRovin about that? A. I told you, what I write—

"Q. That was also a lie?"

> Mr. Nizer: I skip to 961, Line 10.
>
> Mr. Greenspoon: The answer is on the next page, "It is not a lie."

"A. It is not a lie, but—

"Q. What were you going to say, it is not a lie but what was it, an untruth? A. I don't know what I told him, it was just—

> "Mr. Nizer: All right. I produce the letter. I ask that this be marked as an exhibit, Defendant's Exhibit G44, dated February 26, 1965, from Galic to DeRovin and is addressed, 'My dear friend.'

"Q. Is that your signature, Mr. Galic? Look at the (2269) signature first and then we can make much more progress because I will go into the letter. A. The second part, yes.

"Q. You mean the second page? A. I tell you yes, the second part, yes.

"Q. You didn't sign the letter except at the end, of course. Did you send that to DeRovin? A. Yes."

Ferdinand Galic, E.B.T.

Mr. Nizer: All right, I offer the French letter on the letterhead of Ferdinand Galic, dated February 26, 1965, and an English translation thereof.

Mr. Greenspoon: We concede the translation.

(Defendant's Exhibit 80 was received in evidence.)

Mr. Nizer: I intend to read from Page 962, Line 5.

"Q. I am going to the fourth paragraph, the short one. A. Yes.

"Q. I will translate and see if you agree. Just one sentence. 'In any event he no longer wants Mr. Brenner to go to Libya.' Now "he" is Dr. Hammer, it is not as you wrote it? A. Yes.

(2270) "Q. So you were writing in February 26, 1965 to DeRovin that Dr. Hammer no longer wants Brenner to go to Libya, right? A. Probably after I explained in the accident what he has on the airport.

"Q. I am just asking whether you said that? A. Yes.

"Q. That was not untrue, was it? A. No.

"Q. At this time you told DeRovin a truth? Is that right? A. Yes. But he was still in Libya, and it was not—

"Q. No, you told him not to go to Libya. Don't you see you wrote that? A. Yes, yes.

"Q. All right. Now look at the second page, and the fourth paragraph. I will translate. 'Hammer is furious, and because of that he does not want Brenner to go again to Tripoli nor to handle this transaction.'

Is that a fair and accurate translation?

"A. Yes.

"Q. So you were telling DeRovin that Dr. Hammer doesn't want Brenner to go to Tripoli nor to handle this transaction, not only not to go there but to have anything (2271) to do with the transaction, isn't that what is means when you wrote it? A. Yes, yes.

"Q. And yet you testified in this case that it was Brenner in July 1965 that, and before the bids were even opened, that he was giving you the block numbers, is that what you testified to? A. That is right, but he was—

"Q. All right, hold it."

(2272) I go to page 969, which is in another volume—

Mr. Greenspoon: Mr. Nizer, there is a statement made by you on line 14 of page 966, concerning an investigation which you people had made. Would you mind reading that into the record, lines 14 to 18?

Mr. Nizer: Of what?

Mr. Greenspoon: Page 966. Apparently you all made an investigation of the Palace Hotel's records in Tripoli and you stated what your investigation disclosed. It is just one short paragraph.

Mr. Nizer: All right, line 15, I will read it, page 966.

"Q. Mr. Galic, according to our information, you stayed at the Palace Hotel in Libya only once in 1964; that was from October 13th to October 16th, 1964. Is our information correct on that? Would you confirm that? A. I think I stayed two or three times."

Mr. Greenspoon: That is all.

Mr. Nizer: I go from there to 969—I would like to change that to 968, to make the rest more comprehensible.

Top of the page, line 2:

"Q. I read to you from page 602, please, line 10, of the testimony you gave, I believe, yesterday, at this (2273) deposition,

"Q. Do you know a man by the name of Robert Girard?"

Mr. VanVoorhis: Does this have any relevance?

Mr. Nizer: I believe it is going to be a contradiction of his testimony.

Ferdinand Galic, E.B.T.

Mr. Greenspoon: Isn't it a fact that you had the name of the man wrong and that is what caused all the confusion? It is purely irrelevant.

The Court: We will take our mid-morning recess, gentlemen.

(Recess)

The Court: We left off at page 968, am I right?

Mr. Nizer: Yes, your Honor. I was reading at line 6 or 7—I will start with line 5 again, and I am quoting from his testimony—I will start with line 2:

"Q. I read to you from page 602, please, line 10, of the testimony you gave, I believe, yesterday, at this deposition.

'Q. Do you know a man by the name of Robert Girad? A. I don't know.'

You never heard of that name?

"A. Girard.

"Q. Girard. This is what you testified to. (2274) A. Yes.

"Q. 'Q. Do you know a man by the name of Robert Girard? A. I don't know.

'Q. You never heard of that name? A. No.

'Q. Have you ever heard of the name Robert Fisette? A. No.

'Q. You never heard that name before? A. First time.

'Q. Did anybody ever write to you about a Girard or Fisette in connection with any matter? A. This is the first time I heard this name.

'Q. So you never traveled with these men, Girard or Fisette, any place, did you? A. I don't know. This is the first time I heard about them.'

Now, do you stand by those answers? Is that still your recollection today? A. I cannot remember me any of these names."

There was marked at the deposition G45, which is a letter in French dated June 23, 1965, consisting of three pages, and it is a letter from DeRovin to Galic and in reply to D77, as your Honor will see, which is a letter (2275) in evidence—excuse me, the D77 is the reply to what I am now offering in evidence. This is the one I am offering—

Mr. VanVoorhis: Which is—

Mr. Nizer: D77 is June 29, 1965, on the letterhead of Galic, to "My dear Colonel," and that is the rather lengthy letter that Galic sent to DeRovin, which is already in evidence, D77.

The Court: What is the date of Defendant's Exhibit 77, June what?

Mr. Nizer: June 29, 1965.

The one I am offering now is six days earlier, June 23, 1965, with the English translation.

Mr. Greenspoon: Which one are you offering, the Galic letter dated June 23rd?

The Court: The DeRovin letter of June 23, 1965, and sent by DeRovin to Galic?

Mr. Nizer: Right.

The Court: Which, according to Mr. Nizer, is one of the letters referred to in Galic's letter to DeRovin of June 29, 1965, in evidence as Defendant's Exhibit 77.

Mr. Nizer: Right.

Mr. Greenspoon: We will object to the DeRovin letter. We don't know about the translation yet, but we (2276) object to anything written by DeRovin.

(Defendant's Exhibit D81 received in evidence.)

Mr. VanVoorhis: Please hold just a moment.

(Pause)

Mr. Greenspoon: The translation is erroneous, clearly erroneous in a very important part. The Girard, as you all have translated it—

Mr. Nizer: Please tell me where you are reading.

Mr. Greenspoon: Well, on your translation—

Mr. Nizer: That is a very minor part of this letter.

Mr. Greenspoon: Let's get them correct. In DeRovin's letter he refers to, and you can see it right in there, a G-i-r-a, Mr. Gira Robert, top of page 3, G-i-r-a, and that is either the first or last name, I don't know, and Robert—

Mr. Nizer: Wait, slowly, so I follow you, please.

Mr. Greenspoon: Look on page 3 of the French letter—

Mr. Nizer: Tell me on the English what you want to change.

Mr. Greenspoon: We wanted to read like it was written, top of page 3, second paragraph.

Mr. Nizer: Change Robert Girard to what?

(2277) Mr. Greenspoon: To Mr. Gira, and then the next name he has is R-o-b-e-r-t. So I assume the man is Gira Robert, or Robert Gira, and the next name he has is Mr. Fisette, F-i-s-e-t-t-e, Robert, R-o-b-e-r-t. I assume his first name is Fisette and his last name is Robert.

Mr. Nizer: I don't assume that, but go ahead.

Mr. Greenspoon: You don't make that assumption, but that is the way DeRovin wrote it.

Mr. Nizer: You want to just change Gira and Robert after that, which I will do, and then you want me to take Fisette and Robert after that, right?

Mr. Greenspoon: But Girard is spelled G-i-r-a, yes.

Mr. Nizer: I have it.

Mr. Greenspoon: I don't care how the names go, Robert Gira or Robert Fisette, but I want them the way DeRovin wrote them.

Mr. Nizer: Is there anything else?

Mr. Greenspoon: I have not checked it all out yet. Let me just check it.

(Pause)

Mr. Greenspoon: Incidentally, I think what's his name wrote the word Mannik, but I think he means Massick. (2278) Massick was the Prime Minister. It doesn't matter. He wrote it the wrong way.

The Court: What is the problem?

Mr. Nizer: We are waiting until you finish reading, your Honor.

The Court: All right. On the first page there are references to the writer having been referred to as a general and also as to Allen's brother-in-law on which you questioned him yesterday?

Mr. Nizer: Yes, I read the deposition and now I have the letter. That is why it sounds so familiar.

Mr. VanVoorhis: We object on the ground that it is not binding on the plaintiff.

Mr. Nizer: I continue on page 969, line 14:

"Q. I show you this document"—

Now D81—

"and ask you whether you received this letter from Mr. DeRovin? Did you receive that from Mr.— A. I remember some parts, that probably I received. It is not Sira, it is Shira."

(2279) Mr. Nizer: I skip to the next page.

The Court: If you gentlemen can enlighten me, what does that answer refer to?

Mr. Nizer: I think he means jury, igira, but that is the way he said it.

Mr. Greenspoon: I think he was talking, your Honor about gira, which is a man, and not Gerard as he had been questioned about earlier.

Mr. Nizer: He says it is Shira, he makes it S-h.

Mr. Greenspoon: He probably was reading a French letter.

Mr. Nizer: The French letter doesn't say that. But I will go on. It doesn't matter to me.

Incidentally, I notice that the word "G-i-r-a" at the French version, the "a" is at the very end of that line. It might well be there is an omission of the last two syllables, and I don't know, but it doesn't matter for these purposes.

Go to the next page from 969, Line 18, to 970, Line 8.

"Q. I will tell you what I want. What is the date of that? (2280) A. 23 June.

"Q. Now, I show you Exhibit G40 (D77) and ask you if you didn't reply to that letter which you are holding in your hand. Look at the very first sentence. A. Yes.

"Q. So, doesn't this make it clear— A. Yes, it makes it—

"Q. —that you replied to the letter you are holding in your hand (D77)? A. Yes.

"Q. So there is no doubt that you received it, is there? A. I think so.

"Q. Let me read the second paragraph, and you tell me if it is an accurate translation: "With respect to the Occidental business I know that they pursued their application through Ogbi, that all the documents have been

filed on time, and that presently Mr. Blom is in Tripoli on their behalf. It is undeniable that Ogbi will succeed not through Kabazi, but through Mansk and I strongly believe he will soon become minister in Mansk's cabinet."

Mr. Nizer: I now go to 972 at Line 14.

"Q. Incidentally, was my translation accurate and correct? (2281) A. Yes.

"Q. In the third paragraph: 'I had recommended him to you for another company had the case presented itself and other business too. His brother-in-law didn't want to meet you. I did my best to create friendly relations between them and you. I put you on a pedestal for this business, and the only lie I told them was that you were H. Allen's brother-in-law. Like you said I was a general at Faisan, when I never to you such thing. I told you and I maintain that it is the truth that I had been a colonel, general manager of Vincinnes, with General Dario as chief.'"

Mr. Nizer: I go to the bottom of the same page, 973, Line 23:

"Q. When you read this letter from DeRovin that his brother-in-law didn't want to meet you, didn't that mean to you Khobia's brother-in-law, namely, Kabazi? Didn't it mean that to you, did that mean Kabazi? A. DeRovin believed, but he didn't know it, that he meet him every day.

"Q. I am not talking about that. I am talking about the meaning of the sentence. Didn't that mean Kabazi? A. Probably.

"Q. When you answered Mr. DeRovin in your letter, which is Exhibit marked D77, you didn't tell him that was (2282) untrue, did you? A. That isn't true what?

"Q. You didn't in your reply, in your answer to this statement that Kabazi didn't want to meet you, you didn't tell him, 'That's a lie, that's untrue'? A. I don't re-

member what I write to him, but I don't give it any importance to that.

"Q. You didn't consider it important that you were being told by DeRovin, who is in Libya, that Kabazi didn't want to meet you, that was not important to you, is that right? A. For me it was completely unimportant."

Mr. Nizer: Continuing on the next page, 975, Line 4.

"Q. You tell him in your answer, 'You didn't write correctly.' A. I told you, I don't give any importance—

"Q. 'My letter is not'— A. I don't know."

Mr. Nizer: I got to Line 22 of the same page.

"Q. Can you find any place where you denied it? A. That's a letter what I readed before, yes?

"Q. Yes. That's an answer to that letter, and I am asking you whether you denied what DeRovin wrote to you. (2283) A. If I deny him that, I don't see Kabazi, then he will know I see Kabazi. I don't want DeRovin to know what I see Kabazi.

"Q. You didn't tell him, then—in other words, you did not tell him— A. I—

"Q. Listen to my question, you can't answer it before I ask it.

"You didn't say to him in your letter anywhere that when you say that Kabazi—when DeRovin wrote to you, 'Kabazi doesn't want to meet you, I did my best to create friendly relationships between them and you, I put them on a pedestal, and the only lie I told them was that you were H. Allen's brother-in-law,' you didn't say all of that was true to DeRovin, did you? A. I didn't. I told you, I don't give it any importance."

The Court: "You didn't say all of that was untrue," is what is in my copy.

Mr. Nizer: It is not written here, but that is correct.

Mr. Greenspoon: That was the reporter's correction.

(2284) Mr. Nizer: It means that, obviously.

I go to Line 6, Page 977.

"Q. Look at Exhibit D81, the last paragraph on the first page. I will read that in English: 'Ogbi has never—'

"This is DeRovin writing. A. Yes.

"Q. 'Ogbi has never known me as general. When you introduced me to H. Allen under this title, I felt compelled not to correct it in order not to contradict, embarrass you. And later in Tripoli to change anything of what you had said would have been prejudicial to your interests as well as to mine. My name alone has always meant something.'

"Have I accurately translated that paragraph? A. Yes, yes.

"Q. Now, look at the third page, the second paragraph: 'The Ogbi business—' this is DeRovin writing to you? A. Yes.

"Q. 'The Ogbi business will succeed, and you will also succeed with DeRovin, as it is clear that Mr. Robert Girard—'"

Mr. Greenspoon: G-i-r- what?

"The Witness: It is Gira. It is G-i-r-a, (2285) American.

"Q. How do you spell it? A. G-i-r-a, Gira.

"Q. 'That Mr. Robert Gira and Mr. Robert Fisette—'

"Mr. Greenspoon: No, you are not reading it right, is is Mr. Fisette, Robert.

"Q. Is it Robert?

"Mr. Greenspoon: It is written Fisette, Robert, and Gira, Robert. I think we had better get our names straight."

Mr. Nizer: I go to 980, Line 20.

Mr. VanVoorhis: I think if any stress is being placed on—if any stress is being placed on Galic saying that he was with these two people, I think that the names ought to be straightened out. This doesn't go towards that. I am not at all sure that the subject is of any importance anyway. But if you are going to stress it, I think it ought to be read to clarify it.

Mr. Nizer: I didn't say I was stressing anything. I will offer that letter. I will read on in accordance with your suggestion, 979, the intervening page.

"Q. In French you say Gera instead of Robert. A. There was both American. You pronounce it (2286) American, but they was both American. Fisette Robert or Gera, I don't know the first name of him. I remember now Gera which I see it on the paper. You told me Gerard, and for this reason I don't know it.

"Q. Fisette? A. No, he was with him, but I don't know it—he presented me—we went in plane together there, and he presented me, how you presented anybody, but I don't remember the name.

"Q. First I will finish, that 'Gera and Fisette Robert,' however you pronounce it, 'didn't come with you to Tripoli on June 4th for nothing. In addition you have signed an agreement with Khogi in Rome.' Now, have I, first, accurately translated this? A. Yes.

"Q. Did you come to Tripoli with these two men, Gera and Fisette Robert, or Robert Fisette, whatever the name is? A. It was succeeded when I was in Paris, and I was flying. I was in George Cinc and I see it Gera, but I know him. He had a secretary, a Jugoslav girl, whose father was a very good friend of mine, his father, and he told me that he's going to Libya for Arab Port Idris. I (2287) told him I am many times in Libya and

I know what it's about. He told me about airport power in Libya. He asked me, 'You know somebody who can help me there?'

'I told him yes, Khogia.' And that was the deal for the Arab airport interests. They had some MM machines, or I don't know what the machines, for landing.

"Q. Who was Girard? A. I told you—"

Mr. VanVoorhis: Gira, I think it is.

The Court: The record here is G-i-r-a. These might be court reporters' corrections.

Mr. Nizer: I will accept it.

"Q. Who was Girard? A. I told you, I know him once. I know him in Vienna. I see him the year before, he was a guest of my father, who was a very good friend of mine. And he was employing in Los Angeles, or some place else in California, his daughter. And George Cinc, I meet him accidentally, and he told me, 'Galic, I'm here, I'm going to Libya,' and I told him I'm all the time there. 'Why are you going there?'

"He told me I want to go for Airport Idris"

Mr. Nizer: Now I intend to read where I had intended to at 980, Line 20.

(2288) "Q. I read from Page 3, fifth paragraph. A. What page, 3?

"Q. 3. "My condition agreements"—my agreements are signed by Hammer and Ogbi. Everything has been originated by me. To exclude me would be the greatest mistake on your and Mr. Hammer's part because I've learned to defend myself with respect to it against anything.

"Is that accurately translated? A. Yes.

"Q. Now, look down below, the next to the last paragraph beginning with 'I'll tell you more.' Do you see that? A. Yes.

"Q. 'I'll tell you more. Mr. Ogbi told me the Embassy never told him anything about me, and that he learned everything from you when you went to him to claim the $10,000.' A. Yes.

"Q. Is that accurately translated? A. Yes.

"Q. You testified before that you did not report"—

Mr. Greenspoon: That you did report.

Mr. Groman: There is a "not" in there. Does your Honor have a "not" in there?

(2289) Mr. Nizer: I will read it the way it is written.

The Court: His testimony was that he did not report it to him.

Mr. Nizer: That is why I added it. I thought that was a slip.

Mr. Greenspoon: He testified he had talked to Hammer about it.

The Court: Take the transcript as it is.

Mr. Nizer: Thank you, sir.

"Q. You testified before that you did report the bad report of DeRovin, did you not? A. Everybody know it.

"Q. No, did you report it to Ogbi, is my question? A. I don't remember now exactly. Everybody know it, about his report, but it was the French Embassy who provoked everybody."

Mr. Nizer: Reading from the top of 982:

"Q. I am asking you whether you brought that news to Ogbi? A. I don't think that I was first. He must—

"Q. You may not have been the first, but I don't know —you told him about it? A. You asked me now from recollection. How can (2290) I remember now?

"Q. You remember on the things from that period in this case, don't you? When there is a reference in this letter to having signed an agreement with Khogia in Rome, what agreement did you sign with Khogia in

Rome? A. He was writing, from every corner that he had, he would write. From his imagination, he put everything in."

Mr. Nizer: 984 is what I would go to at Line 6.

"Q. I will ask you now. After March 29, 1966, did you ask anybody to find out whether the concession contract had been signed by Occidental? A. If I don't write to DeRovin to just fool him up, otherwise nobody cannot write. Probably he wrote to Mr. DeRovin to fool him up of any intervention."

Mr. Greenspoon: It was probably "I wrote."

The Court: You want to correct it, it is probably "I wrote"?

Mr. Nizer: It is probably I wrote to Mr. DeRovin to fool him up of any intervention.

"Q. Even after the concession contract was signed, you were still trying to fool him, is that correct? A. I was keeping DeRovin all the time—"

Mr. Nizer: Continuing on the next page, Line 10.

(2291) Mr. VanVoorhis: It would appear he was interrupted in his answer at that point by the next question.

Mr. Nizer: Do you want me to read on, the top of 985? I will.

Mr. VanVoorhis: No, I just wanted it pointed out that he had not finished his answer.

Mr. Nizer: Do you want me to read it? I will. It will take less time.

Mr. VanVoorhis: All I wanted was to put in the dash to show he was interrupted, that's all.

Mr. Groman: There is a dash after the word "time".

"Q. My question is, after the concession contract was signed with Occidental, were you still trying to fool DeRovin? A. I don't remember what I write him.

"Q. I read to you from Page 673 of your testimony in this case, Line 16. "Did you ever ask anyone outside of Libya in April 1966 to find out whether Dr. Hammer had signed a concession contract? A. I don't need it. I know it.

"Q. So you did not ask anybody? A. No."

Mr. Nizer: I go to the next page, Line 10, (2292) where we marked a two-page letter dated April 7, 1966. It is marked D49 for identification and it is written by Galic in French in his own handwriting, to DeRovin, and I have an English translation of it.

Mr. Greenspoon: What is the number of that one originally?

Mr. Nizer: D49 for identification, G46 originally.

Mr. Greenspoon: Excuse me, but it has been marked here as 49.

Mr. Nizer: While you are looking—

Mr. Greenspoon: I haven't gotten your translation of that, have I?

Mr. Lewis: Yes, we do.

Mr. Greenspoon: Where did you get the year 1966 from, Mr. Nizer?

Mr. Nizer: It is on—

Mr. Greenspoon: It is not on the original.

Mr. Nizer: It is in parenthesis here. The date is explainable anyhow.

Mr. Greenspoon: Maybe it does, but—

Mr. Nizer: Do you challenge that this was '66 in view of its contents?

Mr. Greenspoon: Whatever the witness says, (2293) if he was asked. If he wasn't asked then

it doesn't belong on the letter, because it wasn't on the letter originally.

I know that is your handwriting.

Mr. Nizer: No, no, he was asked the question.

Mr. Greenspoon: Let't find out.

Mr. Nizer: Suppose I read on Page 986, Line 23.

"Q. The first question is, did you send it? A. Yes, I see it has—

"Q. All right, now let me read the third paragraph, 'One thing is certain that Hammer was in Rome yesterday and that he left at 4:25 for Tripoli. It is interesting to know whether he signed or not. I don't know. My lawyer tells me that the best thing for us would be if the contract were signed, and I hope that it will be.'

"Have I translated that fairly and accurately? A. Yes.

"Q. Is it true that on April 7, 1966, that you didn't know whether the concession contract was signed for Occidental in the Libyan oil matter? A. It was signed. I know it.

"Q. But you wrote a lie here? A. How I told you before. I was keeping DeRovin (2294) at all times out of any business.

"Q. How were you keeping him out, by telling him that you didn't know whether it was signed? If it was signed, it was signed. He couldn't go there and unsign it, could he? A. He could go to Tripoli to see it.

"Q. He would know it was signed and the whole world would know that later. Why did you say on April 7, if you say you knew in March that you were in touch—and you were in touch with Kabazi, that you knew all the time— A. I cannot tell you many things."

Mr. Nizer: Now I offer this letter.

Mr. Greenspoon: We still object to the date, the 1966, which does not appear on the letter.

Mr. Nizer: The 1966 in parenthesis on the letter, I am not sure who put that there, but I will take it off.

Mr. Greenspoon: It certainly wasn't put there by Galic.

Mr. Nizer: Since he testified, aren't we making a fuss about nothing? You didn't hear the question:

"Is it true?"

All right, I offer it in evidence.

(2295) Mr. Greenspoon: The translation is substantially correct. We don't object to the translation.

The Court: Well, there was a direct reference immediately from the witness' question as to the date on Page 986.

Mr. VanVoorhis: We are not saying it was not 1966. We are only saying that it doesn't appear on the letter what the date was.

Mr. Greenspoon: I didn't think there was—I don't think he ever asked the witness what year it was.

The Court: Well, he made the statement though, Mr. Nizer, at Page 986, April 7, you asked what date?

Mr. Greenspoon: I asked Mr. Nizer.

The Court: And he answered April 7, 1966. Followed by the question: "Is that your handwriting and your signature? A. Yes."

Mr. VanVoorhis: If it was it was a week after the actual signing.

Mr. Nizer: Further, the question which I read to him or which I put in 1966 at Line 14.

(Defendant's Exhibit 49 for identification was received in evidence.)

(2296) Mr. Nizer: From page 988, line 11, I skip to 989, line 5.

"Q. I read to you from your testimony at page 676, line 15:

'Before your settlement with Occidental, Dr. Hammer, did you tell anyone outside of the United States that you were anxious to make a settlement because your claim was extremely bad? A. No.'

"Do you remember making that answer? A. Yes."

Now, I had marked Defendant's Exhibit 47, dated August 16, 1966. It is from Galic to "My dear monsieur De Rovin" and it is G47, and I read for the qualification of the letter:

"Q. Is that your signature? A. Yes.
"Q. Did you send that letter to De Rovin? A. Yes."

I offer it in evidence.

Mr. VanVoorhis: This is simply offered on credibility, I assume?

Mr. Nizer: I offer it for all purposes.

Mr. Greenspoon: We don't quarrel with the (2297) translation. I take it that word in the third paragraph is "I have no contract with him"? There is an r there, is that correct?

Mr. Nizer: That's right.

Mr. Greenspoon: We have no objection to the translation, it is correct.

Mr. VanVoorhis: We do object to it as not binding on the plaintiff.

(Defendant's Exhibit D82 received in evidence.)

The Court: What was the date of the settlement or, more correctly—

Mr. Greenspoon: August 27th and 26th, 1966.

The Court: Why were there two dates there?, Wasn't the $16,000 signed on a separate date?

Mr. Greenspoon: The letter is dated August 26th and the check is dated August 26th, while the releases were originally dated August 26th but the acknowledgment, when they were notarized, they put August 27th. So it was on one of those two days.

Mr. Nizer: Now I go from the last line on 989 to 991, line 8, quoting from Defendant's Exhibit 82:

"Q. 'I hope you will find a solution for Dr. Hammer with otherwise. If you interfere through the lawyers, you will obtain no result and you cannot do anything.'

(2298) "Is that an accurate and fair translation? A. Yes.

"Q. Now, the next paragraph: 'In any event, as far as I am concerned, I will make an arrangement. I do not know which. But I want to liquidate this matter for it is extremely bad.'

"Is that a fair and accurate translation? A. Yes.

"Q. Was any of this true or was this written to fool him? A. It was like all letters what was written to De-Rovin.

"Q. What does that mean, it was untrue? A. That was —how I told you, it was everything to keep him—

"Q. Listen to my question. You are always not answering but giving me some reason for your answer. Answer it first.

"Is there any word in that letter that I have read so far that is true? A. Everything what was written to De Rovin more or less is not true.

"Q. Look at the very last paragraph. I will translate that:

(2299) 'Give me your telephone number in Rome'—you are writing to De Rovin—'give me your telephone number in Rome since after my return from Deauville around September 4th and 5th I will go through Rome in going to Tripoli.'

"A. Yes.

"Q. Is that an accurate translation? A. Yes.

"Q. Were you going out of your way to go through Rome in order to visit De Rovin? Is that what you were telling him?

"Will you answer my question? A. There was many ways I was going. I was going to Rome or not, I don't remember on that."

I skip from 993, line 2, to 994, line 17:

"Q. Page 653. Let me first go to 649 so you will have the date that I asked you about, the bottom of 649, line 24:

'After the announcement by Libya of what awards has been made, did you ask anyone to find out what concession blocks had been awarded to Occidental?'

"And at line 9 you answered:

'Then everybody knows, included me.'

"Q. After the announcement by Libya of the awards on (2300) the radio, did you ask anyone to find out what concession blocks had been awarded to Occidental? Did you or did you not ask anybody to do that? A. I know it myself."

Go to line 11:

"Now go to 653. I then asked you, line 17:

'Did you ever ask De Rovin to find out what blocks had been obtained? A. De Rovin was not there.

'Q. Did you ever ask him, is my question. A. No.

'Q. Did you ever ask Lucia to find out what blocks had been obtained? A. No.'

"Then on line 4, 654, 'Did you ever ask De Rovin to check with Lucia what blocks had been obtained? A. No.'"

Then I had marked a French handwritten letter from Galic to De Rovin, now Defendant's Exhibit D50 for identification. That was G48. That is dated February 22nd, and then in pencil underneath it, I believe by De Rovin, 1966—in pencil or in ink—the date, the year. This is a French handwritten letter from Galic to DeRovin dated February 18, 1966, marked G48.

(2301) "Q. Is that your handwriting and did you sign that letter and send it to De Rovin? A. That was written by me.

"Q. And sent to De Rovin? A. I don't know that. That was written to me, yes. If he see this piece of paper by me I don't think so.

"Q. It was written by you, not to you? A. Yes.

"Q. Wasn't it written to 'My Dear De Rovin'? A. Yes. Asked me about the signature.

"Q. That is the letter on the top. Doesn't the letter hold over to the top of the second page? A. I don't know if this is the same or not.

"Q. Isn't that handwriting on the second page? A. Yes.

"Q. Doesn't it connect? A. I don't know if it connects.

"Q. Read the last line. A. Yes, it can be.

"Q. And the first page is also in your handwriting isn't it? A. Yes.

"Q. I am going to read the first paragraph, and tell me if it is an accurate translation."

(2302) Reading from line 1—well, before I read that, I offer D50 for identification, with an English translation. It is written in handwriting from Galic.

Mr. Greenspoon: Is that old G48?

Mr. Nizer: Yes, that's right.

Mr. Greenspoon: The translation we don't quarrel with. I don't know whether we are objecting to it or not.

(Pause)

Mr. VanVoorhis: We enter the objection that it is not binding on the plaintiff, that is all.

The Court: Isn't it your contention that you are participating in concessions that were turned up through Galic's effort?

Mr. VanVoorhis: Well, I have to acknowledge—

The Court: I don't mind when lawyers make these objections, but it seem[illegible]ne we have reached a point where we a[illegible]rroting words without regard to what is [illegible]red.

Now, how that objection really can be made in the light of all the documents I received in this case, I don't understand.

Mr. VanVoorhis: We will withdraw it, your Honor. I have to acknowledge that it was a purely formal objection. (2303) We withdraw it.

The Court: All right. I will recognize it then as a formal objection that is withdrawn.

(Defendant's Exhibit D50 received in evidence.)

Mr. VanVoorhis: A lawyer's caution, I suppose.

Mr. Nizer: Page 997, continuing—

Mr. Greenspoon: Where did you stop, Mr. Nizer?

Mr. Nizer: Line 5, I am continuing:

"Q. I am going to read the first paragraph, and tell me if it is an accurate translation.

'Dear Mr. De Rovin,' this is dated February 22, 1966—'I just learned that Occidental has obtained the concessions and that Ogbi was a member of the Petroleum Commission.'

"Is that an accurate translation? A. Yes."

I skip to line 22 on the same page:

"Q. I read the next paragraph:

'If you could learn from Lucia what numbers? And since he has signed, since we cannot do anything before he has signed.' Is that an accurate translation? A. Yes.

"Q. When you wrote, 'If you could learn from Lucia what numbers,' 'you' means, of course, De Rovin; right? (2304) A. Yes.

"Q. And you want him to learn from Lucia what the numbers of the concession blocks were that he got from Occidental; is that right? A. Yes.

"Q. Then you want to have De Rovin find out from Lucia whether Occidental had signed, right? A. Yes.

"Q. Was this also to fool De Rovin, this letter? A. Everything what I—

"Q. Was this to fool De Rovin? Not everything. Was this? A. I went to De Rovin many times, from the beginning to the end. He was in Malta, and with all his reputation, and I wanted to keep him all the times, not do it to start anything that could damage me in Libya.

"Q. Since I want to save time, I won't pursue this at length, but I want to ask you one or two questions about this, and I will let the correspondence speak for itself after that.

"On February 22, 1966, you had just learned that Occidental had obtained the concessions for oil in Libya, according to this letter? A. No, talking to De Rovin. Talking to De Rovin.

(2305) "Q. If you learned it before, did you have to say, 'I just learned'? A. To De Rovin, I always keep him, how I told you, I repeat you, always in the wrong way. So what I wanted from him is only that he's out of that.

"Q. Would he be— A. And I know—

"Q. Listen for a minute.

Would his position be more out of the way if you didn't tell him you had just learned about it, if you just didn't correspond with him on that, or would you involve him in the matter if you wrote to him? Which is the fact. A. I didn't want De Rovin—I wanted to know what he knows there, how he's keeping, what he's researching. For me was the principal things to know if he knows that I'm with Kabazi doing this deal.

"Q. You were asking him to check with Lucia. Didn't you? A. Through that, I—

"Q. Who was Lucia? A. He was employed by De Rovin.

"Q. You were asking De Rovin to ask Lucia to find out what the block numbers were on February 22, 1966? You were (2306) going through all this charade, do you tell me, just for the sake of fooling him? A. De Rovin, absolutely.

"Q. Wouldn't this request by you to De Rovin to have Lucia make an inquiry through Ogbi on this matter make De Rovin more active in the matter than he was before you wrote him?

"Listen to my question and answer it. A. Yes, I listened to your question.

"Q. Then answer it directly. Do you want to have it repeated? Just answer yes or no or an answer that would answer directly."

I go to page 1001, line 18—

The Court: Before you leave that page, there is the answer by the witness that Lucia was employed by De Rovin: I state from my recollection that Lucia with Ogbi?

Mr. Greenspoon: Correct, your Honor.

The Court: He was his assistant, wasn't he?

Mr. Greenspoon: He was Ogbi's assistant yes, your Honor.

The Court: All right.

Mr. Nizer: I go to page 1001, line 8:

"Q. Answer the question, please. (2307) A. I wanted him just not to be in the picture, that's all.

"Q. That is the best answer you will give to that question? A. Yes. I didn't want De Rovin at all. I wanted—

"Q. Did you ever—excuse me.

"Did you finish? A. Yes.

"Q. Did you ever write to De Rovin that Kabazi would not sign a letter concerning the concessions that you say you received until after he was out of the Ministry? A. What, what, what?

"Q. Did you ever write De Rovin that Kabazi would not give you that letter, that Kabazi letter, until after he was out of the Ministry, after he stopped being a minister? Did you ever write that to De Rovin? A. I don't remember that.

"Q. Do you deny that you wrote that to De Rovin? A. I don't remember.

"I told you, I don't remember.

"Q. I read to you from page 654. Page 654, line 23, I read your testimony in this case:

'Q. And the announcement of the awards on February 20th, did you tell anyone that you did not know how Occidental (2308) had won the concessions? A. That I don't know.

'Q. Did you tell anyone that you don't know how Occidental had won the concessions? Just answer it. A. No, I was not discussing with anybody.

'Q. After February 20, 1966, did you tell anybody that you were going to find out through whose efforts the concessions had been obtained for Occidental? A. No.'

"Q. On page 654, lines 7 to 9, and then line 16:

'After February 20th, did you tell anyone Occidental had obtained oil concessions in Libya through efforts of someone else than yourself?'

Answer given on line 16, after some colloquy:

'A. No.'

"Q. Page 656. I read from Lines 11 to 15, and then 22. I will read up at Line 5 to introduce it:

'Q. How long after February 20, 1966, did you have that discussion with Herbert or Charley? A. I don't remember.

'Q. Can you fix any time? A. No. If I tell you something, it would be from the air.

'Q. In that discussion, did Herbert Allen or (2309) Charley Allen, whoever you were talking to, tell you that you had misled him into believing that concessions would be obtained by negotiation rather than by sealed competitive bids?' "

Line 11:

'The Witness: No, it was always bids, so there is no question about it.'

"Q. Now I read on Page 660, Lines 7 to 13:

'Q Did Allen, when you talked to him, Herbert or Charley, reproach you for representing—do you know what representing means, saying, that the concessions could be obtained by negotiation rather than by tough bidding? A. No.'

"Now, I read at Page 661, Lines 1 to 9:

'Q. After your talk with Herbert or Charley Allen, whoever you were talking to, did you tell anyone that Allen had reproached you for believing that concessions would be granted by negotiation, and therefore, your effort or intervention would be valuable if it had been by negotiation?' "

I then marked a French letter dated March 15, 1966. It is a letter from Galic to De Rovin on

Galic's letterhead and it was marked Exhibit G49 and is now D51 for identification.

"Q. My question is, did you sign that letter and (2310) send it? A. Yes.

"Q. My next question, you sent it to De Rovin; right? A. Yes."

I offer it in evidence.

Mr. Greenspoon: May we see your translation?

Mr. Nizer: You have it there.

Mr. Greenspoon: First I think you ought to produce that March 12th letter, Mr. Nizer, so we can find out what we are talking about in this letter. It doesn't make any sense in the absence of that letter.

Mr. Nizer: All I am doing is offering it in evidence at this time. I am not going to argue the content.

Mr. Greenspoon: We have some translation problems. We don't agree with the translation in the fourth paragraph—

Mr. Nizer: Which page?

Mr. Greenspoon: First page, where you say, "And then it was by tough bidding," and we say, "And later on it was by means of a closed bid."

Mr. Nizer: We say, "Then it was by tough bidding."

Mr. Greenspoon: That is not what the letter says.

Mr. Nizer: Let's be modest about it, since neither of us know French too well: You mean that is what (2311) you claim?

Mr. Greenspoon: That is what our translator says.

Mr. Nizer: The witness admitted this was an accurate translation.

Mr. Greenspoon: The way that man speaks English, he wouldn't know whether it was an accurate translation or not.

Mr. Nizer: He would know the difference between "tough bidding" and what you have just said.

The Court: Who are the expert French interpreters, Mr. Greenspoon and Mr. Nizer?

Mr. Greenspoon: Mr. Giles translated for me. I don't know who translated for Mr. Nizer.

The Court: For a moment I thought you two gentlemen were the experts.

Mr. Nizer: I don't profess to be, your Honor. I read French but not well.

I think this is a matter for rebuttal or challenge later, your Honor.

Mr. Greenspoon: If the translation is going in, I think somebody should say it is right.

Mr. Nizer: The witness says it is right and I will bring in my expert. I have Professor deVries (2312) available to testify and also my French law partner, Leon Alexandroff who practiced law in France for many years says it is right—

Mr. Greenspoon: All right, I am told by my associates it doesn't matter.

(Defendant's Exhibit D51 received in evidence.)

Mr. Nizer: That was previously G49.

Top of page 1006, line 2:

"Q. I will read paragraph by paragraph and ask you, first, whether these are accurate translations:

'Paris, March 15, 1966. Mr. FFL Hoilou De Rovin, Piazzo Marco Anzio 105, Int 3, Lido-Osteroma.'

"And on top is your letterhead.

"You say:

'Dear Sir: I received your letter of March 12th. I do not believe that you are right since the intervention which had been made for Occidental come from somebody in a very high position. I do not know yet who it was, but believe me, I will learn it.'

"Is that an accurate translation of the first paragraph? A. Yes.

"Q. I read on:

'Finally, if somebody is really the victim in (2313) this matter, it is myself. I was the one who introduced Occidental and again it was I who made loans of money to all the intermediaries and I have not received any reimbursement. The travel expenses borne by me aggregate an important sum of money. And in the final analysis, everybody tries to avoid answering.'

"Is that an accurate translation? A. Yes.

"Q. Next paragraph:

'I just wrote to Mr. Allen, who introduced me to Occidental to ask him to support me in my lawsuit, since morally he is responsible.'

"Is that an accurate representation? A. Yes.

"Q. You say: 'I just wrote to Mr. Allen.'

"I ask that you produce a copy of the letter which you sent to Mr. Allen, or that counsel produce the original of the letter that Allen received from you. A. If I write to Mr. Allen, I don't know. But everything that I write it to Mr. De Rovin, it was just foolish.

"Q. Is the copy of the letter that you wrote one of those that you destroyed? A. I don't know."

(2313a) The Court: All right, Mr. Nizer, I think at this point we will take our luncheon recess.

(Luncheon recess)

Ferdinand Galic, E.B.T.

(2314) Afternoon Session 2:00 P. M.

The Court: Proceed, gentlemen.

Mr. Nizer: Continuing on Page 1007, Line 24.

"Q. The letter that is referred to here, 'I just wrote to Mr. Allen,' is the copy of that letter destroyed? A. I don't know if I write him. I don't remember if I write him.

"Q. It just says, 'I just wrote to Mr. Allen.' A. I told you, everything what I was writing to DeRovin, it was foolish. It was—

"Mr. Nizer: Give me that, please.

"Mr. Greenspoon: No, no, no, Mr. Nizer.

"Mr. Nizer: I want the record to show that counsel has handed the witness a paper and it is D10 (P163) which he has shown him and is in front of him. I ask counsel to produce a copy of the letter, either the original letter which Allen received, which is referred to here, or the copy.

"No, Mr. Galic, put that down, please.

"Mr. Greenspoon: You may hold it, Mr. Galic.

"Mr. Nizer: Counsel may not shove papers in front of you.

"Mr. Greenspoon: We have no such document and (2315) have never seen such document, and no such document exists.

"Mr. Nizer: Do you represent that, Mr. Greenspoon?

"Mr. Greenspoon: I represent the first two parts of it.

"Mr. Nizer: Do you represent that no such document exists?

"Mr. Greenspoon: Don't bother me with that.

"Mr. Nizer: That is the statement you just made.

"A. Everything I have, I have with me here.

"Q. Counsel just handed you a cable, which is Defendant's Exhibit 10 (P163), dated March 15, 1966. Do you notice that the letter that you are reading now, which is Exhibit G49 (D51) is also dated March 15, 1966, the same day? Do you see that? A. What?

"Q. The cable is March 15, 1966, and the letter is March 15, 1966. A. Yes.

"Q. Since Mr. Greenspoon put that in front of you, I might as well use it. The cable, which I read to you now, D10 (P163) reads, 'From you to Charles Allen. Regret (2316) oblige sue you also for damages as Occidental Petroleum which you contacted for me has reneged on its contract. Letter follows. Galic.'

"Letter follows."

"Now, where is the letter—I have asked counsel for it—have you got a copy of the letter which follows? Did you write the letter which you say there right in the cable? A. I don't remember if I write a letter, or if—

"Q. Did you destroy a copy of that letter? A. I don't remember if I destroy.

"Q. Did you destroy a copy of that letter at the same time that you destroyed Exhibit DG46 (D51), which is dated the same date, March 15, 1966, and which I have produced from another source? A. I don't remember."

Mr. Nizer: Skipping to Line 23 on the same page, 1010.

"Q. The bad report—"

Mr. VanVoorhis: This is, of course, the letter which Mr. Allen testified did not accompany, did not follow the cable.

"Q. The bad report on DeRovin was made in '65, wasn't it, in 1965, the bad report on DeRovin? (2317) A. I think so.

"Q. And this letter that we are talking about, as you said, 'I just wrote to Mr. Allen,' that is March 15, 1966, this letter; right? That is a year later? A. A year later.

"Q. You said that you destroyed the letters which you had sent to anyone in connection with this matter after you got the bad report, the letters to DeRovin and from him? A. Yes.

"Q. But this is a year later. Did you also destroy that? A. What letter?

"Q. The copy of the letter—first, the letter that you sent to DeRovin, which I have produced. A. Yes.

"Q. Was that destroyed in your file? A. This one?

"Q. Yes. A. Yes, I don't have it.

"Q. And the letter that you sent to Allen, did you send a letter to Allen, or don't you remember? A. I told you already.

"Q. What did you tell me? (2318) A. That I don't remember.

"Q. When you said 'I just wrote to Mr. Allen,' that was also false? A. That it is nothing means what I write to DeRovin. To DeRovin I was writing him all times every story, just to keep him out, keep him out from me and keep him out from me and also with Occidental.

"Q. Isn't it a fact, Mr. Galic—let me ask you this, isn't it a fact that you did send a letter to Mr. Allen—"

Mr. Greenspoon: Where are you reading from?
Mr. Nizer: Line 13.

"Q. Isn't it a fact, Mr. Galic—let me ask you this, isn't it a fact that you did send a letter to Mr. Allen on the day that you said 'I just wrote to Allen'—listen to me—and that in that letter you told him to ignore this cable that you were going to sue him, that this was just to show to somebody, and of course you were not going to sue him? Is that a fact or not, if I bring it to your mind? A. I don't remember it at all.

"Q. Is it possible that you did that? A. I don't remember it at all.

"Q. Do you deny that you did that? (2319) A. I don't remember at all.

"Q. Do you deny? A. I don't remember. How can I deny it or not?

"Q. Did the Allens ever tell you to destroy your correspondence with DeRovin? A. No, they don't tell me to do anything. I was free to do what I want."

"Mr. Nizer: I read the last paragraph and see if this is an accurate translation. 'It is also to a great extent my own fault,' you write to DeRovin? A. Yes.

"Q. 'I relied on your statement that the concessions could be obtained by negotiation, and then it was by tough bidding. This is what Mr. Allen reproached me yesterday. You could have avoided that. That will be the weak point in my lawsuit.' Is that a fair and accurate translation? 'It is also to a great extent my own fault,' you write to DeRovin? A. Yes.

"Q. 'I relied on your statement that the concessions could be obtained by negotiation, and then it was by tough bidding. This is what Mr. Allen reproached me yesterday. You could have avoided that. That will be the weak point (2320) in my lawsuit.'

"Is that a fair and accurate translation? A. No.

"Q. Is that a fair and accurate translation? A. Yes. Translation, yes."

Mr. Nizer: I propose to go to page 1015 from page 1014, line 8, to page 1015, line 10:

"Q. You say here, 'This is what Mr. Allen reproached me yesterday.' You were in Paris at the time, because this is written from Paris. Is that right so far? A. Yes.

"Q. Was Mr. Allen in Paris at that time? A. I don't know.

"Q. Do you know where he was? A. I don't know. In New York probably.

"Q. Did you talk to him on the phone? A. I don't know."

Mr. Nizer: I skip from line 20 on page 1015 to page 1016, line 6:

"Q. You invented all of this letter? This is all fiction? A. Fiction.

"Q. Every word of it? (2321) A. Fiction.

"Q. Do you say that the Allens knew from the beginning that concessions would be by bidding? A. They knew it from the beginning, like everybody.

"Q. But De Rovin did not know it from the beginning? A. De Rovin, he know it also. When he was in Libya, to make him important, he was thinking that he can obtain the concession by his relation, or imagination, now you want.

"Q. When you wrote to him in this last paragraph, 'I relied on your statement that the concessions could be obtained by negotiation, and then it was by tough bidding'—just listen to me question first, please—were you trying to fool him when you told him that he had represented it was a negotiation and not by tough bidding?

"Were you trying to fool him by telling him what he said to you? A. Wait a minute, I understand. I was fooling him, but he mention it sometime, but I don't give it any importance to that, but now I snap him here to tell, 'you told me that you can obtain it with your (2322) connection without bidding,' but everybody, even the porter of the hotel, knows that a concession can no be done without bidding, no question."

Mr. Nizer: I go from line 16 on page 1017—

Mr. VanVoorhis: I think we ought to have the next question and answer.

Mr. Nizer: All right, at the behest of the plaintiff I continue reading line 17.

Mr. VanVoorhis: Two questions anyway.

By Mr. Nizer:

"Q. Did Allen ever say to you, either Charles or Herbert Allen, did they reproach you in any way? A. No.

"Q. Not at all. A. I never discuss with them.

"Q. You were just making up this whole story in this letter, is that right, to De Rovin? A. All the letter what was to De Rovin, I done it how I need it.

"Q. Did you ever sue the Allens? A. No.

"Q. Did you agree to join with the Allens in suing Occidental? (2323) A. No, I told to Allens—

"Q. No, listen to my question. Just answer my question.

"The word 'weak,' 'that would be the weak point in my lawsuit,' is the French word faible there, is it not, the last line? On the first page? A. Yes.

"Q. 'You could have avoided that. That would be the weak point in my lawsuit.' What is the word for 'weak'? A. What paragraph are you reading?

"Q. Last. It is the next to the last on your copy. Is the word 'weak' 'faible'? A. Yes.

"Q. That is 'weak'? A. Yes."

Mr. Nizer: I go from that line on 1018 to page 1019, line 7:

"Q. 'I find myself today with a quantity of machines which I purchased for Libya. It is out of the question that I would give them to a partnership with Khogia. He is a very nice and decent fellow but he is only fit to be an employee of the post office or the railroad station rather than to manage (2324) a business.'

"Is that an accurate translation? A. Yes."

Mr. Nizer: I go to page 1020, line 6:

"Q. Was this also false in order to fool him, to fool De Rovin? A. It was exaggerated.

"Q. To fool De Roven? A. If he receive it, it must be true"—

Mr. Greenspoon: Wait a minute.

Mr. Nizer: No, there is another question. Pardon me.

"Q. To fool De Rovin?

"Is D-10 (P-163)"—

Mr. VanVoorhis: Yes, but the answer is to the next question.

Mr. Nizer: I know I am going to read it in the interstitial part, Judge.

"Q. Is D-10 a cable that you sent to Allen, also untrue or true? Was this also done to say it for the record? A. If he receive it, it must be true, if he receive it.

"Q. If who received it? (2325) A. Allen, if they received it.

"Q. If they received it, it's true? A. Yes.

"Q. If they don't receive it, it isn't true? A. If they receive it, it's true."

Mr. Nizer: I skip from line 2 on page 1021, to line 18:

"Q. Let me put it to you again. Haven't you been telling us in various ways that the reason you wrote these untruths to De Rovin was to press down his claim against Occidental? A. That's also true, there.

"Q. Let me read the following paragraph to you from Exhibit D-51.

"Do you see that? A. Yes.

"Q. 'I believe that your possibilities of successful lawsuit are very great.'

"Has that been accurately translated? A. Yes, yes, yes.

"Q. Weren't you there trying to increase his enthusiasm for a lawsuit rather than decrease it? A. When I told him—read that whole paragraph.

"Q. I will. But, first, I ask you about that (2326) sentence. A. I don't know. I have to read it.

"Q. You want the rest of it? A. Yes.

"Q. Let me read the rest:

"'After all, I was the one who introduced you * * *' let me read the whole thing together.

"'I believe that your possibilities of successful suit are very great. After all, I was the one who recommended you to Occidental and represented you to the Occidental representative. I believe that you could obtain from a hundred thousand to two hundred thousand dollars of damages. In any event, I will ask for much more, and we will see what will be the result.'

"Is that an accurate translation? A. Yes.

"Q. So there you were not trying to reduce his claim in his own mind, but to inflame him, weren't you? A. No, not to inflame him, but I was thinking a hundred thousand dollars—

"Q. I am not asking about the amounts, Mr. Galic. Listen to my question again. If it is not clear, I will repeat it.

(2327) "I am not asking about the amounts of settlement. As a matter of fact, it is a legal matter, and I agree that all of that is out of this case.

"All I am asking you is whether you said several times, many times, that you were writing him because you wanted to think very low about his claim, you were writing him:

"'Your possibilities for a successful lawsuit are very great * * *'

"Was that a lie when you wrote it to him?

"Was that the truth at the time you wrote it, that that was your belief? A. I was my belief that not that he could have very much, but he promised me at the beginning that he was damaged."

(2328) I go from line 8, on 1024, to page 1026, line 13, where I offer and mark an exhibit, a letter handwritten in French, dated May 16, 1966, marked Defendant's Exhibit G50 for identification.

Mr. Greenspoon: This isn't in the pre-trial memorandum either.

Mr. Nizer: I will just read a qualifying sentence or two and then I will wait.

Line 18:

"Q. My question is, is that your handwriting; did you sign it? A. Yes.

"Q. Did you send that to DeRovin? A. Yes."

I offer it in evidence.

Mr. Greenspoon: Well, we have a small matter of translation. I don't think the word is "attack."

Mr. Nizer: What line?

Mr. Greenspoon: It is "I shall take action."

Mr. Nizer: Instead of "I am attacking Dr. Hammer," "I shall take action against Dr. Hammer"?

Mr. Greenspoon: Yes.

Mr. Nizer: Well, I won't quibble about it. I will accept that change and then the translation is (2329) acceptable?

Mr. Greenspoon: Yes. We have no other changes in it.

Mr. Nizer: I offer this in evidence.

(Defendant's Exhibit D83 received in evidence.)

Mr. Nizer: Continuing to read from page 1026, line 23:

"Q. I am going to read, first, the first paragraph:

"'I wrote to you before going to Tripoli, and I gave you an appointment in front of the Cafe De Paris, but you weren't there. Have you received the letter?'

"Is that an accurate translation? A. Yes.

"Q. You were trying to see DeRovin and made an appointment and he didn't show up; is that what this means?

"Is that what this means to you? A. Probably.

"Q. And were you trying to get an appointment with him? Were you trying to meet with him so you could fool him? A. Probably.

"Q. I read on:

"'After having spoken with Lucia in Tripoli, (2330) I am convinced that Ogbi has finished his business and he did not tell me with whom, that is to say, with which personality.'

"Is that an accurate translation? A. Yes.

"Q. When you wrote, 'I am convinced that Ogbi is finished his business and he did not tell me with whom,' were you referring to the oil concessions that were granted? A. Probably.

"Q. Whether you said that you did not know with whom, you mean you don't know with what high officials he was talking? A. I know it.

"Q. No, you were telling him that you don't know with whom. A. What I'm telling him, I don't give any importance what I'm telling him. I want just that he don't appear that I know—that I done it with Kabazi the deal.

"Q. You had a participation with Ogbi in anything he received, did you not? A. Yes, I had.

"Q. And so did DeRovin, didn't he? A. That's right."

(2331) I skip to line 22, same page:

"Mr. Nizer: I ask that this letter, 19th of September, 1966, be marked Defendant's Exhibit G-51."

Mr. Greenspoon: It is that now, isn't it, G-51?

Mr. Nizer: This is a two-page copy of a letter dated September 19, 1966, sent by Galic to Monsieur DeRovin and the translation has been submitted.

(Pause)

Mr. Greenspoon: We have no quarrel with the translation.

Mr. Nizer: I offer it in evidence.

(Defendant's Exhibit D84 received in evidence.)

Mr. Greenspoon: We don't feel that these negotiations or discussions as between these people individually with respect to how they should divide up between them the amounts which would come to them under their contracts with Occidental are really relevant, but we are not pressing the point.

The Court: Proceed, please.

Mr. Nizer: Line 13, page 1030—well, I begin a little higher. I don't think I read that. I begin at line 5:

"Q. Is that your signature? Did you write that (2332) letter? A. Probably. I have to see.

"Q. Please give it a look, sir. A. I say yes.

"Q. Did you send that to DeRovin? A. Yes."

I don't think it is necessary, in view of the contents of the letter, to go further.

Mr. Greenspoon: You went to line 10?

Mr. Nizer: To line 12.

That will conclude the cross-examination of this witness, your Honor, but before I permit counsel, if he wishes, to read the redirect, I want to offer in evidence these letters and I accept the suggestions of Mr. Greenspoon concerning the translations in order to do away with the delay.

First, the letter of March 20th—

Mr. Greenspoon: Can you give me numbers?

Mr. Nizer: D29.

Colloquy

Mr. Greenspoon: How does that read now?

Mr. Nizer: You wanted two corrections on that and so if his Honor wishes to look at it, I will consent to the two corrections.

Mr. Greenspoon: Well, there are really three, but (2333) one is of no consequence.

Mr. Nizer: One is that you said in the second paragraph—

The Court: "I am going to do business."

Mr. Nizer: No, "I am going to write," instead of "I write." I will accept that.

Then in the third line from the bottom, instead of "and since Hammer is coming," a new sentence, "However, Hammer is coming."

Mr. Greenspoon: "And I want to tell him."

Mr. Nizer: "And I want to tell him."

The Court: I didn't get the last one.

Mr. Greenspoon: A period after the word "people" and then it would read "However, Hammer is coming and I want to tell him what he must say," and then I think we agreed that the word "work" would be "do business."

Do you see that up there, second line, second paragraph?

Mr. Nizer: "It is not possible to work"—

Mr. Greenspoon: "It is not possible to do business."

Mr. Nizer: Is it necessary, your Honor, for me to call attention, since there will be no examination on this, to any particular sentence that we believe is (2334) pertinent, or shall I not engage in that?

The Court: As you will.

Mr. Nizer: I would prefer just to indicate—Galic says, "I sent a third telegram to Khogia and if he doesn't answer, I will drop everything"—

Colloquy

Mr. VanVoorhis: Just a moment. I have an objection to these letters which I would like to state on the record before they are read.

We have stipulated to the authenticity of these letters, in other words, that they are signed by Mr. Galic, but they are offered, as I understand it, in an attempt to impeach his credibility and without laying any foundation for it in his cross-examination. The letters which up to now have been introduced, he was questioned about. These he was not questioned about and under the rule, as we understand it, and if I may I will cite a case or two to your Honor on that, although I am sure you are familiar with the rule that a witness may not be contradicted with respect to a collateral matter in order to impeach his credibility unless a foundation is laid in his cross-examination, the reason for the rule being, of course, so as to bring it to the witness' attention at the time in order that he may have an opportunity to explain or contradict or deny, whatever may be the circumstance at the time.

(2335) A familiar statement of this has been that "A witness cannot be impeached by statements alleged to have been made by him before or after he has testified until he has been adequately warned by the cross-examination that those statements will be later offered against him and thus he or the party calling him be enabled to correct the testimony given or prepare a denial or an explanation of the statements. In case the statements are oral, the warning is given by asking the witness, in substance and effect, if he did not at a given time and place in the presence of a person or persons specified make the alleged contradictory statements. In case the statements are in writing and unsubscribed, the paper must be shown or read to the witness and marked

for identification and if subscribed, the signature, and in case he so demands, the paper must be shown to him."

I am quoting from the case of *Larkin v. Nassau Electric Railroad Company*, 205 N. Y. 267.

I believe that the federal rule is similar and the reasons for it are quite clear and apparent, I think.

Mr. Nizer: Your Honor, this is not merely offered to impeach. The authenticity—

Mr. VanVoorhis: Excuse me. I meant to add: Galic is not a party to this action. This is not an admission, can't be read as an admission against interest by a party (2336) to an action. He is simply a witness here.

Mr. Nizer: To take up the last point first, he is an agent, according to the plaintiff—

Mr. VanVoorhis: No, he is not an agent—

Mr. Nizer: —who was supposed to turn up this concession and a condition of his turning it up is a condition for the plaintiff having a cause of action at all, under their own theory, your Honor. But, more than that, it is the classic rule that any document where the authenticity of it is conceded may be used not only to impeach a witness but to demonstrate an admission of some kind contrary to his sworn testimony.

Now, on this very letter, even though it goes to the German subject matter, your Honor, here is a statement in this very D29 that he should ask his brother-in-law, meaning Kabazi, whether one can conclude a concession with a German group so as to be associated completely of making a transaction.

This is an admission which touches the defense which your Honor discussed with counsel earlier.

In other letters which are submitted here and which are written in the handwriting of Galic and cannot be contested, there are admissions which go

to his lack of performance, that he doesn't even know who did the performing (2337) that he claims he did and upon which the plaintiff's rights are dependent.

Counsel also began his statement by referring to the fact that this rule refers to collateral matters. We are not talking merely of collateral matters, though I do not accept that reservation and that is not the rule; this refers to the very essence of performance upon which the plaintiff claim is predicated.

Therefore, I think, your Honor, that having agreed on the translation, that these letters may be considered by your Honor and if your Honor would want further memoranda or law on this perhaps your Honor can take it and if there is any doubt, we will be glad to submit a memorandum because I don't recognize or accept the rule that was quoted as being the rule in this jurisdiction or indeed the rule at all. So I would like to continue to offer these and hope your Honor will consider them for whatever they are worth.

The Court: Well, Judge VanVoorhis, I have taken so much that I don't see why this letter is not admissible, apart from any liberal attitude in the receipt of evidence.

For example, on the issue as to whether or not the Galic group turned up the concessions which eventually were awarded to the defendant, if I have understood your position, both as stated orally in the opening argument and (2338) as set forth in your briefs, you have referred to the Galic group as playing a role with respect to obtaining these concessions. The precise expression, I believe, was that the Galic group would turn up, or the plaintiff would participate in such concessions as may re-

sult from their activities in turning them up and I think definitely it would go to that subject.

I am not saying what inference should be drawn from the letter. There is no precise language here that would support the defendant's position. At best, it would be a matter of inference insofar as the defendants advance a defense that the Galic group was faithless to its duty to devote efforts exclusively to those of Occidental's interests.

I would also think that in the light of the general cross-examination which was conducted of this witness and as I recall some portions of his testimony which were read into the record yesterday, he denied that he played any role insofar as any German group was concerned in obtaining any of the blocks that were the subject matter of bids.

I think there was a specific question put to him with respect to 42A or B and I think that is one of the groups the defendant was interested in that was eventually (2338a) awarded to the German group.

Mr. Pollio: 47, your Honor.

The Court: And this could go to the issue of credibility and impeaching his credibility and I think it could be received for that purpose.

(2339) Mr. VanVoorhis: The reason for the objection is that they were not called to his attention in his cross-examination. Your Honor will recall that there have been numerous letters that have been introduced here without objection where they related —I mean where they were called to his attention and where in many instances he had some explanation or comment or characterization, sometimes denial. Inasmuch as they have been introduced earing on his credibility and without his having any opportunity of being confronted about them when he was being cross-examined, we base our objection on that.

The Court: There was another letter that was received in evidence this morning, I believe, touched on this very issue.

Mr. VanVoorhis: Yes, the letter that Mr. Nizer—

The Court: And which he was questioned about and his attention was directed to the specific portions of the letter and since it touched on the same subject and relates to the same issue, at best now, we have that experience, at best it can be of minimal experience in light of so much that is in the case.

I would just as soon take it as exclude it, and I think as Judge Learned Hand said, if there is doubt (2340) as to whether to receive or reject, it is better to receive it particularly in the instance of a Court sitting without a jury.

(Defendant's Exhibit 29 for identification was received in evidence.)

The Court: I think we are overemphasizing the importance of some of these matters in light of some of the very extensive evidence that has been received both in the direct of the witness and the cross-examination of the witness. There is so much that is almost supererogation.

Mr. Nizer: D30, please.

Mr. Greenspoon: I assume you will agree the name Brenner is misspelled, B-r-e-n-n-e-r.

Mr. Nizer: Two N's instead of one.

Mr. Greenspoon: Yes.

The Court: Incidentally, on this last exhibit that I just had this discussion on, that Judge VanVoorhis addressed himself to, I don't see any year on it. It is March 20. Have counsel agreed on the year? I see, is that the one that he wrote in his handwriting in '65? The copy doesn't have it. The transiation doesn't have it.

Mr. Greenspoon: Your Honor, that is not (2341) Galic's handwriting, 1965. We will concede from the

substance of that letter that it was obviously written in 1965, but Galic did not date that letter.

Mr. Nizer: All right. I can tell your Honor that this is the way we received it, with the date '65 written on it.

The Court: I don't think we have to go beyond that, Mr. Greenspoon's explanatory statement that it appeared from the substance it was sent in 1965.

Mr. VanVoorhis: My objection is related to this whole series, your Honor.

The Court: I understand that.

Mr. Greenspoon: I will concede from the subject matter of it that it was probably dated August 8, 1966.

Mr. Nizer: No, 1965.

Mr. Greenspoon: HD30?

Mr. Nizer: D30.

Mr. Greenspoon: Oh, no. D30, I will not agree that that was 1965.

Mr. Nizer: Do you have the original of that? '65, this is the way we received the original handwritten document with '65 on it.

Mr. Greenspoon: That is not Galic's handwriting.

(2342) Mr. Nizer: You can't tell me that.

Mr. Greenspoon: I know that and you know that and that '65 was put on there by someone else and this letter was obviously written in 1966.

Mr. Nizer: No, it is obviously not. But why don't we do this, your Honor, to do away with this kind of contentiousness, we will offer the letter and later if there is any doubt we will show by the contents which year it was. In the meantime I offer it just as the original came. It has that on. I don't represent Galic did it or anyone else. We didn't. This is the way we got the original handwritten letter.

Colloquy

Mr. Greenspoon: The same objection to this one. This one, your Honor, has absolutely nothing to do with anything that has been read before.

The Court: If it has nothing to do with the case why are we spending time on it?

Mr. Nizer: I offer D31. Of course, I don't agree with that.

The Court: Am I mistaken, didn't you ask the witness in the question about D30? There is a reference.

Mr. Greenspoon: I think your Honor that was DG30.

The Court: Why certainly you did at Page 1029.

(2343) "I ask that this letter, lest we are talking of a different letter, the 19th of September 1966, be marked Defendant's Exhibit D51." This is the one that was just handed to me, isn't it?

Mr. Greenspoon: This is August 8, your Honor.

The Court: It may be the clerk gave me the wrong one.

Mr. Nizer: The one that is now before you is August 8. D30.

The Court: Now there is some confusion here. You show that when you questioned the witness, or was reading from the deposition, at the bottom of Page 1029:

"Mr. Nizer: I ask that this letter, 19 of September, 1966, be marked Defendant's Exhibit G51."

Mr. Nizer: That is correct.

The Court: You say that is now D30. It can't be because D30 is August 8.

Mr. Nizer: That is wrong.

The Court: This one that has been handed me, what exhibit number is this one now?

The Clerk: Your Honor, that is 51, that has been received as D84.

Colloquy

The Court: It isn't marked.

The Clerk: I haven't had a chance to mark it (2344) yet.

The Court: You did ask questions about D84 and your discussion was direct to that.

Mr. Nizer: No, your Honor is right.

The Court: Therefore, Judge VanVoorhis, there were specific questions asked of the witness with respect to that particular exhibit.

Mr. Greenspoon: No, your Honor, that was D29 that Judge VanVoorhis was talking about.

Mr. VanVoorhis: My objection related to those which had not been brought to the—there is a whole series of letters here. I know the one Mr. Nizer read from I think was one that was brought to the attention—that we discussed—but that was only one of a number which was offered and my objection was limited to those.

The Court: The very last one. I recall that there were questions put with respect to it and I am calling your attention on this record that it was so.

Mr. Greenspoon is shaking his head. Go down and look at 1029 and 1030 and see if that isn't the letter of September 19, 1966.

Mr. Greenspoon: Yes, your Honor, but that is not the letter we are referring to.

The Court: Then show me the one you are talking (2345) about.

Mr. Greenspoon: We are referring to the one that was just offered, D29 and D30 of March 20 and August 8. That is a different letter.

The Court: Now first about this August 8th one, again there isn't any year on it.

Mr. Nizer: On the original there is, your Honor. The original French.

Colloquy

The Court: What is the plaintiff's position with respect to that, is there agreement as to the year?

Mr. Greenspoon: No, sir, not if that is dated 1965, that is not Galic's handwriting. It was put on there by somebody we don't know who, perhaps DeRovin, I don't know. And we think from the context of this letter that it is dated 1966. I don't know.

Mr. Nizer: How could that be? Read the third paragraph: "Upon reflection"—writes Galic—"the best thing would be to sell to an enemy of Dr. Hammer, the right against him."

Mr. Greenspoon: That is right.

Mr. Nizer: If he is going to sell against him, how could it be '66?

Mr. Greenspoon: Because by August 8, 1966, Mr. (2346) Nizer, Galic had not yet settled his claim again Hammer. And that is the point.

Mr. Nizer: Well, I have offered the document as we have received it and I guess the rest, your Honor, is for your Honor to determine from contents and we will be glad to submit memorandum.

Mr. Greenspoon: A copy of it which was given to us doesn't even show '65 on it. So I can only assume it was put on there after the copy was given to us.

The Court: Well, the date, that is the year is uncertain. I am aware of the one sentence that you just read, obviously that is the purpose of offering it in evidence. There is enough in the record about this already. I am going to exclude it because of the controversy.

Mr. Nizer: I offer D31 in evidence.

Mr. Greenspoon: The translation is satisfactory. I think we have our same type of objection to it.

Mr. VanVoorhis: I won't repeat the objection with respect to these.

Colloquy

The Court: Please allow me to read it first. This is a letter from Galic to DeRovin, dated Paris, June 8th. Is there agreement on the year again?

Mr. Nizer: That is clearly 1965, isn't it, Mr. (2347) Greenspoon?

Mr. Greenspoon: Yes, I would agree that this is 1965.

Mr. Nizer: That is what we say, too.

Mr. Greenspoon: Because that is the time when the Prime Minister was involved, being forced out or something.

The Court: What year do you say this is?

Mr. Nizer: 1965.

Mr. Greenspoon: 1965, your Honor.

Mr. Nizer: We both agree.

The Court: Well, this was sent even before the letter of July 16, 1965, wasn't it?

Mr. Greenspoon: Yes, your Honor.

The Court: Now would you explain to me the theory on which you think it ought not to be received in the light of some of the statements you made earlier urging admissibility of documents that were exchanged between DeRovin and Galic where you urged the receipt in evidence of documents exchanged between them? It seems to me you can't have it both ways.

Mr. Greenspoon: I agree with your Honor on that.

Mr. VanVoorhis: Just to clear our position, (2348) in view of what your Honor has just said—

The Court: I am asking you a question. You have urged repeatedly that certainly with respect to various documents that were exchanged between different members of the Galic group and Galic prior to July 16—is that the date, July 16, 1965?

Mr. Nizer: Right.

Colloquy

The Court: —they are admissible upon a number of theories, without delineating any particular theory on which I allowed them in evidence, but as a general policy, a liberal policy of receiving everything, I accepted them.

Now on what theory can I exclude this now unless I exclude many of the matters that I accepted upon your urging before?

Mr. VanVoorhis: Your Honor, I would just like to clear our position in view of what you just said. Much of what you have just said is not at variance with our view, our position.

We consider that what was done—this includes verbal acts as well as other acts—in furtherance of the project bears on the turning up by Galic and by his group. We don't retract any of what we have said previously on that. The objection which I indicated a little while ago was in regard to documents which I believe are now (2349) being introduced by the defendant which are simply introduced as bearing on the credibility of Mr. Galic where they were not called to his attention in cross-examination.

My objection perhaps may not apply to each and every one of these. I don't remember just how many of them there are. I wanted to state it in that way and so stated, I don't think it conflicts at all with your Honor's analysis.

I haven't at the moment examined this particular document which is now—

The Court: Judge, this particular document, if you read it, at the very opening statement, touches so directly on the custom of turning up and knowledge of what was going on and activity, that I really don't see—

Mr. VanVoorhis: I think your Honor is undoubtedly right about that.

The Court: All right, it will be received.

(Defendant's Exhibit 31 for identification was received in evidence.)

The Court: I culled that date from my memory. Am I right that July 16 is the date of the letters that went to the three men?

Mr. Nizer: Termination letter, precisely, your (2350) Honor.

The Court: All right.

Mr. Greenspoon: D32, Mr. Nizer, our only difference with you in your translation—

The Court: Let me read this now in full.

Mr. Greenspoon: Excuse me.

The Court: Now, this reference, I take it, to the machines has no bearing on the issues in our case at all?

Mr. Nizer: Except only in the indirect way that it shows he was doing other ways and wasn't always in Libya on that matter. Except for that, no relevance.

I don't suppose I have to read the passages which we stress since your Honor has just read this letter.

Mr. Greenspoon: Now on D32, the only difference we have with you is in the second paragraph on Page 2.

Mr. Nizer: I know. I shall not try again, and you want to say "I will not do it either."

Mr. Greenspoon: Shouldn't there be a period up there in the third line, before the words "I asked Khogia"? I don't think it makes any difference except the sentence just goes on and on forever, but leave it as you got it, but the last one is, "I will not do it either," according (2351) to our translation.

Mr. Nizer: I still think we are right but it doesn't make enough difference. I accept it, so

we dispose of the dispute. Instead of "I shall not try again," "I will not do it either."

All right, I will accept that, your Honor.

I offer in evidence July 10 letter from Galic to DeRovin. This also has a date on top, 1965. I think we will agree on that date.

Mr. Greenspoon: Hold on, let me check.

We will agree from the subject matter of this—let's see—yes, that is where he got the money for Ogbi. This has to be 1965.

Mr. Nizer: The only paragraph that we wish to particularly call your Honor's attention to, is the second paragraph on the second page, which reads "There is the oil conference in Tripoli and in returning from Piemontese to Uaddan, I saw the brother-in-law of Khogia, I greeted him but he did not respond. I asked Khogia when he took me to the airport and he told me maybe he did not recognize you (it is possible but I do not believe it. This time I did not even ask Khogia to see him since he refused me twice and since I have nothing, and after this article I will not do it either."

(2352) The Court: What is the date of this, July 10?

Mr. Nizer: 1965, conceded, the year.

The Court: That would be 21 days before the opening of the bid, is that right?

Mr. Nizer: Yes. Right.

The Court: July 31, 1965.

Mr. Nizer: That's right, and announced February, that's right, exactly right.

(Defendant's Exhibit D32 for identification was received in evidence.)

Mr. Nizer: I offer D33 on which we agree on the translation.

Mr. Greenspoon: We have some problems on 33, Mr. Nizer.

Mr. Nizer: I thought you said okay to that.

Mr. Greenspoon: No, we have changes in 33.

Mr. Nizer: Will you tell me, please.

Mr. Greenspoon: Yes. I have so many translations I can't tell which is which.

Mr. Nizer: I understood you said there was no difference in this.

Mr. Greenspoon: Oh, yes. Our translator can't find the word "unfortunately" in the fourth paragraph.

(2353) Mr. Nizer: What word?

Mr. Greenspoon: He reads it as follows: "Besides I was able to convince myself that"—

Mr. Nizer: I don't know where you are reading, "I twice asked Khogia," that paragraph?

Mr. Greenspoon: Yes. "Besides I was able to convince myself that"—or you have also "I have also found out—"

Mr. Nizer: I am not reading the same letter.

Mr. Greenspoon: "That is something is wanted to be obtained. That's all right. It's only through the royal family. We got a period. I learned this too late. This is the only way."

We don't find the words "but unfortunately" in the letter.

Mr. Nizer: I don't mind, I will take it out. Whether we are right or not, it is too insignificant. I will accept that.

The Court: What would you do, put a period after family?

Mr. Nizer: After family. Take out "but unfortunately."

Mr. Greenspoon: The next thing we have got—the only difference we have in that makes a substantive (2354) difference. You have it there "Maybe it was possibly through Khogia" and we have "Maybe it was ready with Khogia."

Mr. Nizer: No, it couldn't be. Really. Are you sure you had a Frenchman translating it?

Mr. Greenspoon: The word "possibly" has been inserted here in pen by somebody.

Mr. Nizer: That is the way we have it.

Mr. Greenspoon: I know, but that is not the way it was written perhaps, we don't know.

Mr. Nizer: There is the original. You can see it in the original. Do you know enough French to know that—

Mr. Greenspoon: I don't know any French, Mr. Nizer. You know that.

The question is whose handwriting it is.

Mr. Nizer: You had the original and for purposes of translation. It is possible even from your high school French, it is possible and that your suggestion is not realistic.

"It was possible through Khogia but his brother-in-law has categorically refused."

Mr. Greenspoon: All right, we won't argue.

Mr. Nizer: Anything else, sir?

Mr. Greenspoon: On that one?

(2355) Mr. Nizer: Yes.

Mr. Greenspoon: That is all. That is the only differences we have got on that one.

Mr. Nizer: May I call to your attention, your Honor, just one or two sentences here in the second paragraph. "I repeat to you," says Galic "that Ogbi has no secret arrangement with Dr. Hammer. I have found it as an absolute fact since he asked me to renew contact and on the other hand Allen has refused the financing."

Mr. Greenspoon: Which one are you reading from?

Mr. Nizer: D33.

And the fifth paragraph, "Ogbi tells me gossip."

The Court: "Maybe it was possible through Khogia but his brother-in-law has categorically refused."

(Defendant's Exhibit 33 for identification was received in evidence.)

Mr. Nizer: I offer D34, September 18. I believe we will agree that is 1965, Judge VanVoorhis?

Mr. Greenspoon: Yes, this would have to be '65.

Mr. Nizer: All right. And you wanted a change on that, Mr. Greenspoon, on the very last line, instead of "I am completely baffled," you wanted to say "quite upset"?

Mr. Greenspoon: That is what I am told it means.

(2356) Mr. Nizer: I won't quarrel about it. We will take "quite upset", your Honor.

The Court: Where is that?

Mr. Nizer: The very last line on the second page. The paragraph is "Ask the Savoy whether Khogia was in Rome. Really I do not know what to believe, I am quite upset."

The Court: All right.

(Defendant's Exhibit 34 for identification was received in evidence.)

The Court: All right.

Mr. Nizer: I offer D35.

Mr. Greenspoon: The translation we concede is accurate and the year is 1965.

Mr. Nizer: We both agree.

Mr. Greenspoon: I don't see what relevance it has got to anything.

Mr. Nizer: I call attention to the following very brief sentences. "I have no news." Says Galic, on September 20, 1965. "I have no news, there is in the newspapers that the concessions will be given

at any moment. I have not received a photocopy from you. I cabled and wrote to Khogia."

(2357) And then the next sentence, "As soon as I can leave for seven, eight days, I will go to find out the truth. I don't know what to think. Possibly one can learn something from Lucia."

This is September 20, 1965.

(Defendant's Exhibit 35 for identification was received in evidence.)

The Court: What is the date of this one?

Mr. Nizer: It is conceded, September 20, 1965.

Mr. Greenspoon: Wait a moment, are you talking about—

The Court: October 8th I am talking about.

Mr. Nizer: D36, October 8, 1965.

Mr. Greenspoon: Probably. We have no objection to the translation.

The Court: What is the relevance of this?

Mr. Nizer: The last few words on Page 2, in which he says, "But I continue my lawsuit"—this is written on October 8, 1965—your Honor will recall his statements that he was asked to continue to make efforts and not—and to ignore our claim, our termination.

Then on the third paragraph, on the first page, "Mr. Bennahum and Mr. Klehe, for your information, I do not (2358) speak any more with them because of you."

He writes to DeRovin. "It is they who came with a big tam-tam with the official information to Hammer. I say that I cannot believe it. I cannot do otherwise when you speak of someone that you know for a long time and when he comes to you, there is your acquaintance."

Now, in the light of what he said about the DeRovin report previously, then the next paragraph,

"For your introduction in Libya, for the moment that costs me money. At least I have succeeded to have the money of Ogbi with $420 of loss for the expenses that I have had."

(Defendant's Exhibit 36 for identification was received in evidence.)

Mr. Nizer: I offer D37.

Mr. Greenspoon: We will concede that the translation is correct, the date most likely—

Mr. Nizer: 1965?

Mr. Greenspoon: Hold on a moment. Yes.

Mr. Nizer: I respectfully call your Honor's attention to the fourth paragraph "I don't see the usefulness for me, neither Ogbi nor Kabazi, I am submitting my bid, if it goes all right, good, otherwise I don't want to invest one centime without having countervalue."

December 3, 1965.

(2359) Mr. Greenspoon: Your Honor, since he is submitting a bid to Galic, that is, he is obviously not talking about oil concessions.

Mr. Nizer: Oh, no, that is not what that language means. We will leave that to his Honor's reading.

The Court: Well, it is obscure and I will pay it no attention.

(Defendant's Exhibit 37 for identification was received in evidence.)

Mr. Nizer: I offer D38.

Mr. Greenspoon: We will concede the correctness of the translation. The date, more than likely. It would have to be—that is November 29, 1965.

Mr. Nizer: That's right.

Mr. Greenspoon: That is when Ogbi went on the Cabinet.

Mr. Nizer: I don't know about the Cabinet, I say it must be 1965.

Mr. Greenspoon: I gauge that by the fact that Ogbi became Minister of Social Welfare in November 1965.

Mr. Nizer: That's right. Now I call your Honor's attention just to the first sentence.

The Court: "I was in Tripoli for 24 hours and unfortunately for nothing. I arrived Thursday evening (2360) and left Friday." The next words or what I stress. "I saw no one but Khogia."

In light of his testimony, continues relationship with Kabazi.

(Defendant's Exhibit 38 for identification was received in evidence.)

Mr. Nizer: I offer D39.

Mr. VanVoorhis: He said he was in Tripoli for 24 hours.

Mr. Greenspoon: This one, we don't challenge the translation. The date is probably, guessing, June 2, 1966, because that is when Galic was out in California trying to settle with Hammer.

Mr. Nizer: We agree.

Now I call your Honor's attention particularly to the last sentence of that letter. Galic writes "I learned the truth. Our Ogbi he had very little and Kabazi nothing at all that I tell you in Rome. I leave for New York on Saturday from Paris."

(Defendant's Exhibit 39 for identification was received in evidence.)

Mr. Nizer: And the last one is D40.

Mr. Greenspoon: We don't challenge the translation in view of his reference to New York lawyers, it is (2361) obviously April 7, 1966.

Mr. Nizer: Correct. I respectfully call your Honor's attention to the third paragraph:

"One thing is sure that Hammer was yesterday, Wednesday, in Rome and that he left at 4:25 for Tripoli, is that he has signed or not, I do not know.

My lawyer tells me that the best thing is for us that contract be signed and I hope that will be."

The Court: He said that in other letters too, in the writings that he was questioned about.

Mr. Nizer: That is right, sir.

The Court: Suppose we take a short recess.

(Defendant's Exhibit 40 for identification was received in evidence.)

The Court: Are you going to have re-direct?

Mr. Greenspoon: Very little, your Honor.

The Court: Then we will take it right after the recess.

(Recess.)

(2362) Mr. Nizer: Your Honor, I offer under Rule 44B of the Federal Rules an exemplified copy of the certificate of the Custodian of Records of the Ministry of Petroleum Affairs dated July 24, 1969, certifying the absence of any copy of the letter, the Kabazi letter marked in this trial P159, in any of the records or files of the Ministry of Petroleum Affairs. This is the rule, as your Honor knows, which is the means of proving a negative and this is fully exemplified by the Undersecretary of the Ministry of Petroleum Affairs of the Kingdom of Libya.

Mr. VanVoorhis: May we see it, please, Mr. Nizer?

Mr. Nizer: Oh, sure. This is the original (handing).

(Pause)

Mr. VanVoorhis: Whether this purports to cover the special file of the Minister of Petroleum is

not altogether clear, but we are not making any objection to the reception of this, for whatever it shows.

The Court: It may be received.

(Defendant's Exhibit D5 received in evidence.)

The Court: My recollection is that with respect to the document as attached, Mr. Kabazi testified that when he left office—or, first, he placed it in a special (2363) file and it was turned over to his successor in office?

Mr. VanVoorhis: Yes, I think he so testified.

Mr. Nizer: Quite correct.

Mr. VanVoorhis: However, he described it, as I recall it, as a confidential file of the Minister of Petroleum. There is some question, your Honor, and the reason I made the statement that I did is that Mr. Kabazi's testimony was to the effect that that was a confidential file open only to the Minister of Petroleum. Therefore, it is unclear that some assistant in the office would have found it in going through this general search which purports to have been made by the exhibit which has just been offered in evidence.

The Court: You may proceed.

Mr. VanVoorhis: At page 1030, which is still part of the cross examination, we would like to read from line 20, through page 1031, line 21—

Mr. Nizer: This is not proper re-direct. I hope there isn't too much of this. If you just want to read a few lines—

Mr. VanVoorhis: There isn't very much. This is part of your cross which you didn't read.

Mr. Nizer: This is now re-direct, I thought. Go ahead, sir.

(2364) Mr. VanVoorhis: Well, I don't suppose we are curtailed from reading cross as well.

"Q. The next paragraph, 'I told you that my friend Allen has succeeded in obtaining an agreement. I advised you thereof. I waited for three hours for you at the Hilton and you did not come. I do not know your reason. Maybe you do not have the possibility of going freely where you wish to go, but you could have told me that frankly. I would have understood it."

"Is that an accurate translation? A. Yes.

"Q. When you say, 'I told you that my friend Allen has succeeded in obtaining an agreement, you mean a settlement agreement for DeRovin, don't you? A. Yes.

"Q. When you say, 'I had advised you thereof,' you told him what the Allens had gotten for him; is that right, what kind of a settlement? A. Just a moment. This settlement was proposed to me by Dr. Hammer, it was not Allen, and to not mention it that Dr. Hammer had proposed to me, Hammer told me tell him just that I'm agreed to pay the $50,000 and $25,000. Allen has nothing to do with that. I do not mentioned Hammer. I mentioned Allen to make me more (2365) strong that he accept.

"Q. Did Allen know about that settlement with DeRovin? A. No."

That is the end of what I will read there.

Mr. Nizer: Are you stopping there?

Mr. VanVoorhis: I have more to read. I pass from there—

Mr. Nizer: Would you be good enough to finish that, until line 19 on page 1032, please? That begins with "Q. You used the Allen name—"

Mr. VanVoorhis: Very well.

"Q. You used the Allen name— A. Instead of using Dr. Hammer, to facilitate the transaction.

"Q. At the bottom, I read the next paragraph, 'Please advise me whether you want to try to finalize this proposal as you had asked me.'

"That is the proposal of settlement? A. Yes.

"Q. You are asking him to advise you? A. Yes.

"Q. Then you say, 'Send me,' is that an accurate translation of what I read? (2366) A. Yes.

"Q. Now, the last sentence as I have it:

'Send me a separate letter in the name of Allen, or still better in the name of Occidental Petroleum, specifying that you are waiving all claims against Occidental and Ogbi if they pay the sum within ten days date of receipt of your letter in Monte Carlo since I have to communicate it by telephone.'

Is that an accurate translation, is my question. A. Exact translation. That was done—all was done on the—"

Is that as much as you wish?

Mr. Nizer: Yes.

Mr. VanVoorhis: Then we pass to page 1049, at line 25, the last line on the page. This is now re-direct.

"Q. Mr. Nizer brought up the subject, I believe, of a settlement, or proposed settlement, in one of these letters, between Occidental and DRovin. Do you reall that? A. Yes."

Mr. Nizer: Would you be good enough to read my comment in that connection? I won't object now, but just be good enough to read that, since you say I brought it up.

Mr. VanVoorhis: Would you like to read it?

(2367) Mr. Nizer: No, you read it, please.

Mr. VanVoorhis:

"Mr. Nizer: I object to that, particularly the phrase that I brought it up. This has been injected over my objection continuously, and I merely exercised the right of cross under the well known rule that if an irrelevant matter is gone into, that the right of cross examination is permitted, but without

waiving the original objection to the impropriety of the evidence, particularly a settlement discussion. So this is another reference to a matter which may require me to re-cross, but not because I believe that it is properly before this Court at any time.

"And as a matter of fact, one other thing, I hate to delay you, there has been a ruling in this very matter by Judge Ryan, in this very case by Judge Ryan, that a settlement discussion with respect to revelation of terms, and so forth, is to be kept out. But go ahead. That will be in the record."

I suppose I should read Mr. Greenspoon's part of the colloquy:

"Mr. Greenspoon: Mr. Nizer, I don't want to disagree with you, but there is one letter which you produced, and which, if I gather correctly, the trend of what was said between you and the witness, that involved some (2368) kind of a negotiation of a settlement with DeRovin. I don't remember the exact number, but I remember some figures of $50,000—

"Mr. Nizer: We are all reserving our legal rights. Go ahead.

"Mr. Greenspoon: I just want you to understand.

"Mr. Nizer: Just don't put it that I brought it up.

"Mr. Greenspoon: All right.

"By Mr. Greenspoon:

"Q. Do you recall earlier that a letter was marked by Mr. Nizer as an exhibit and it referred to a DeRovin settlement proposal?

"The Witness: Will you repeat that?"

Then he said, "Could we have the exhibits out? Maybe that will make it easier."

The question was read.

"A. Yes.

"Q. I show you Defendant's Exhibit G-51 for identification and I ask you if that is the letter. A. Yes.

"Q. Before September 19, 1966, the date of Defendant's Exhibit G-51, did you have any talk with Mr. Hammer concerning a DeRovin settlement? (2369) A. Yes.

"Q. What was the conversation? A. He asked me to settle with Mr. DeRovin and he told me, 'Don't tell me—don't tell to DeRovin that I settled with you for $200,000. I make you a new statement with you on the basis of $50,000, and look to have the $50,000 settlement from DeRovin.'

"So he give me three, or Ogbi and for him, one for Ogbi and one for him and one for Ogbi, on the basis of $50,000.

"Q. Who is 'for him'? A. For DeRovin, and at the same time it was one settlement, that he desisted from Ogbi asking for any money."

Then we pass to page 1058, at line 11:

"Q. Did you discuss or talk with Mr. Hammer about those letters? A. He know the—

"Q. No, did you do it, first? A. Yes.

"Q. What did you tell Mr. Hammer you were doing with respect to DeRovin after you saw the DeRovin report? A. When he asked me every time—

(2370) "A. —where is DeRovin, what he is doing, I told him I'm in correspondence with him, I'm keeping him, I told him the story to keep him out. He told me, 'That's very good, very good. I don't want to mix me,' he told me, 'I don't want to mix me. That's all right.'"

Mr. Nizer: Of course I have a continuing objection to this, your Honor.

Mr. VanVoorhis: Mr. Greenspoon said, "There are so many pronouns in there I am going out of my mind.

"Q. Would you answer that question again, but this time instead of using pronouns, use the names of people so that we can follow it.

"Do you understand what I'm saying? A. Yes.

"Q. What was this conversation which you had with Mr. Hammer concerning your untrue letters to General DeRovin? A. It was many times, every time when he called me—

"Q. Don't use 'he.' Who is 'he'? A. Dr. Hammer. When Dr. Hammer called me, he was asking me 'What is doing DeRovin, you know where he's staying?'

"I told him he's in Malta. 'What's he doing there?' (2371) "I don't know, but I'm in correspondence with him. I'm telling him this story, I'm keeping him away from our business.'

"So Dr. Hammer told me, 'All right, all right, I don't want to mix me myself, do it like you think is good.'"

Passing on the same page, which is 1060, from line 4 to line 13:

"Q. Did you tell Dr. Hammer"—

My associate suggests I read from where I left off at line 4:

"Q. How many times between, let's say, March 15th and July 1st, do you think you had such conversations with Dr. Hammer? A. It's difficult to remember. Probably four, five times, six times. I don't remember. Maybe about—it was many times before we interrupted—before he send me this cable that he don't want my help any more.

"Q. Did you tell Dr. Hammer where Dr. Rovin was? A. Twice after that. How I remember the first two times he was asking, after that he was not more asking.

"Q. Who is the 'he'? A. Dr. Hammer was asking, the first two telephones, and then probably he know that he was in Malta, he don't (2372) mention it—he don't

ask me where he's staying. But the first two, three times, he was asking me, 'You know where he's staying?'

"Q. Did you tell him? A. I told him in Malta. So I told him I'm keeping out of everything, and he told me —I write him I'm keeping him out of the deal, so he told, 'All right, all right, I don't want to mix me. I'm keeping out of contact with Mr. DeRovin.'

"Q. 'I don't want to mix' what? A. 'I don't want to mix me with Mr. DeRovin. I'm keeping out. I don't want to discuss—' He is keeping out of discussion with DeRovin or writing DeRovin, Dr. Hammer."

Then I am reading from the top of page 1062, line 2:

"Q. Did he tell you to quit writing to DeRovin? A. I told him that I was writing to him.

"Q. Did he tell you to stop writing to DeRovin? A. No, no."

I now pass to page 1068, line 8:

"Q. What is the explanation for the use of the Frottier rather than Slim? A. I asked Dr. Hammer to address it to Frottier.

(2373) "Q. Did you tell him why? A. Yes, I told him he would be trustee for this deal between Slim and Frottier and the other people.

"Q. Did you tell Mr. Hammer whether or not Frottier would receive any of the money called for in Plaintiff 30 for identification? A. I told him that remuneration will be splitted with everybody, Slim, Frottier, and everybody who was in the deal. It was many intermediary, one giving to the other, so everybody was included."

May we have the number of Plaintiff's Exhibit 30 for this?

Mr. Pollio: P63.

Mr. VanVoorhis: Passing to page 1093, line 2, and this makes reference to Defendant's Exhibit G37 as numbered in the EBT, dated February 20, 1965.

Mr. Greenspoon: That may be D74.

Mr. Pollio: What page is it?

Mr. VanVoorhis: It is referred to on page 1092.

Mr. Pollio: That is D74.

Mr. VanVoorhis:

"Q. I will read the last paragraph, and I quote, on page 1, and tell me whether I translated it correctly or not? A. Yes.

(2374) "Q. 'In connection with the ships, will you be kind enough to ask our friend whether he can get in touch with the company with whom he would like to make the contract and that he should simply say that I am going to purchase a tanker of 20,000 to 30,000 tons capacity, and that I would like to have a contract for my tanker for five to seven years and pay it off over this period.' A. Yes.

"Q. Did I translate that correctly? A. Yes.

"Q. Are the ships referred to in Defendant's Exhibit G-37"—

D74—

"related in any way to the shipping group referred to in Defendant's Exhibit G-42 for identification?"

D-48.

"A. Yes.

"Q. Are you in those two exhibits referring to the same business transaction? A. Yes.

"Q. Or proposed business transaction? A. Yes. I wanted to—I want to charter the ship for—

"Q. Did that business transaction ever get (2375) consummated? A. No. I told you—"

Now we pass from page 1094, at line 5, to page 1097, at line 15:

"Q. At that time in April of 1965, was a gentleman by the name of Muntasser still the prime minister of Libya? A. Yes.

"Q. And was he—

"Was he replaced by a gentleman by the name of Mazek? A. Yes.

"Q. And was the question then as to whether or not Prime Minister Mazek would keep Kabazi on as Minister of Oil? A. We don't know it."

Passing from page 1098, at line 4 to page 1119, at line 20—this is from the letter of February 22, 1966, which is now Exhibit—

The Court: Addressed by whom to whom?

Mr. VanVoorhis: It is from DeRovin, I think, to Galic.

Mr. Pollio: That is now D81.

The Court: Who is the writer?

Mr. VanVoorhis: DeRovin, to Galic.

(2376) "Q. 'My commission orders are signed by Hammer and Ogbi. Everything was developed through me. It would be a serious mistake on your part and on the part of Dr. Hammer to cut me out because I have learned to defend myself against anyone.'

"Did I translate that correctly? A. Yes.

"Q. In that connection, did General DeRovin ever tell you what he would do if you tried to cut him out? A. Yes.

"Q. What did he tell you? A. He have it very good friend in Tripoli who has some Arabic paper, newspaper. He told me—he write me I think also that he was very good friend of this newspaper, and that he will put all letter of commission of Ogbi, photostat, in Tripoli Journal."

Mr. Greenspoon: I think that is all we have on re-direct. I think it goes now to re-cross.

Mr. Nizer: I have so little on re-cross, I am eliminating all of it but the introduction of one letter, and I would like to read it from here.

Page 1181, line 24:

"Q. Who was the German group that you referred to in that paragraph? (2377) A. I told you—

"Q. '—whether this brother-in-law will accept a German group—' Who was that? A. I told you it was two, but the Libyan Government has to give guarantee that shipping company was Libyan to buy the ship and not to pay ship—you know, you have to have guarantee and you pay just 10 per cent, and 90 per cent was Libyan—on the guarantee of Libyan Government.

"Q. What did Kabazi have to do with the German group seeking shipping, anything? A. No. He has not to deal with that.

"Q. The only thing that Kabazi had to deal with was oil? A. Oil."

I then marked a letter in French, dated June 2, 1965, G52 for identification.

"Q. I show you G-52 and ask you if that is in your own handwriting and signed by you? A. Probably was date and that was not right—that was not writed by me.

"Q. That wasn't, June 2nd is not in your handwriting? A. No.

"Q. It says 'Paris.' Is that 'Paris' yours? (2378) A. No. That is not my writing. The rest of the letter is my writing."

Going to page 1184, please, line 16:

"Q. First, is that your signature in your handwriting except for what you say is the date you are not sure, I take it? A. Yes."

I offer Defendant's Exhibit 85 for identification—it was originally marked G52—dated Paris, June 2, 1965, and the English translation has been submitted.

Mr. Greenspoon: We are checking it out right now.

As I remember, the witness rejected the date and the heading, correct?

Mr. Nizer: He said he wasn't sure, but he wrote the letter.

Mr. Greenspoon: He said he didn't write "Paris" and the date?

Mr. Nizer: Yes. From the contents, isn't it clear it is 1965?

Mr. Greenspoon: Yes, but I think the month is wrong.

Mr. Nizer: While you are checking that, may I go ahead, save a moment or two?

(2379) Reading from line 20, page 1184:

"Q. Let me read, and go slowly. I will go slowly and see if it is accurate. This is addressed to Dr. Rovin, is it not? A. I suppose so. I don't see.

"Q. Anyhow, you signed and wrote that: correct? A. I signed it.

"Q. And you wrote that, that is all your handwriting, every word of it, except for that date? A. Yes.

"Q. All right.

"'My dear"—this is to DeRovin—

"'My dear, the last five days have been hell. You have cabled to me and 24 hours earlier Dr. Hammer called me on the telephone from Los Angles telling me that bid will be open tomorrow.'

"Is that a correct and accurate translation thus far? A. Yes.

"Q. Is it clear then that it was Dr. Hammer who called you on the telephone to tell you that the bid would be

opened tomorrow, not that you told him? Is that correct as you wrote it? A. I wrote it, yes.

(2380) "Q. 'I cabled to Ogbi but he didn't even answer me and Hammer tells me that he is free to do whatever he wishes and that he will not do it through Ogbi because it is very probable that Bennahum has arranged this. He told me that since your contract is tied up with him, automatically everything is cancelled.'

"Is that a correct translation? A. Correct.

"Q. 'I do not know what role Ogbi has played in that. In a few days I will go to Tripoli to clarify the situation. I want to sue Ogbi for $10,000. I spent up to now 30 to 40 thousand dollars to end up watching what the others do.'

"Is that a fair translation? A. Yes.

"Q. Paragraph.

'As I see, even Khogia did not know that the bids will be opened because I was in Rome with him six days earlier and I asked him to cable me because I wanted to be the first to announce to Dr. Hammer, but I see that he is informed before everybody. I do not know from where.'

"Is that an accurate translation? A. Yes.

(2381) "Q. 'I want to see whether I can handle Khogia with Occidental, but I begin to ask myself whether his brother-in-law will help him and to what extent, because he made me so think.'

"Is that an accurate translation? A. Yes.

"Q. 'I see that Lucia has refused to come to Khogia and he must trust Ogbi more than Khogia. All this makes me think Khogia is a very nice boy but I believe that his possibilities have limits.'

"Is that a fair and accurate translation? A. Yes. Yes.

"Q. His brother-in-law considers him as if he were his son but from the commercial point of view he believes that he has no experience and that he doesn't want to be compromised because I asked him and he promised to give me the map five days before the opening, which

would have been a good argument for Occidental, but not even that. Hence, now after all the trips and expenses, I have to watch the others. But if Occidental makes the same transaction with Ogbi, then he also is not in good order. After all I had done for him. I will telephone from Rome. I hope that this time you will give me the correct number. My salutations, Galic.' (2381a) "Is that a correct transaction? A. Translation, yes."

I offer D85 in evidence.

Mr. Greenspoon: Other than the date, we don't object.

(Defendant's Exhibit D85 received in evidence.)

(2382) Mr. Greenspoon: What page is this all being read from?

Mr. Nizer: 1181 and thereafter to 1187.

The Court: Is there anything else, gentlemen?

Mr. VanVoorhis: We'd like to read, in light of that, and if I may, I will read it from here:

Page 1188—

The Court: This is re-re-direct. What page are you at?

Mr. VanVoorhis: 1188, line 19. This is in relation to this last:

"Q. So, if you see something that says 2/6, that means June 2? A. June 2, yes.

"Q. Now, this says here that Dr. Hammer telephoned me from Los Angeles and he told me that 'bid will be opened tomorrow.'

"If this letter is dated correctly, then that telephone conversation took place either on June 2nd or earlier? A. That is right. Must be before.

"Q. Were the bids opened in June of 1965? A. No. They was not that time June, '65.

"Q. Were the invitations to bids submitted at (2383) that time? A. Invitation was always every two months or three months."

That's all.

Mr. Nizer: That's all.

Mr. Greenspoon: Your Honor, at this time, and we offer it strictly for on the question of credibility of the witnesses, to wit, Messrs. Hammer and Vaughan. We offer, and if I need to I can set the stage, but at the request or at the instance of the defendant, they read into the record the testimony of Dr. Hammer relating to the 1963 so-called application and the fact that certain aspects of the 1965 application just came right out of that and they were the same without substantial change, I think was Dr. Hammer's statement, as read into the record.

We would like at this time to read in evidence interrogatories put to Occidental Petroleum Corporation in a case entitled Raymond M. Thompson and Thomas D. Christopher, plaintiffs, against Occidental, brought in the United States District Court for the District of Colorado, No. 67 C. 381, and we have here the certified interrogatories and answers as given in that case.

Mr. Nizer: Now, before you proceed, not only had this not been referred to or mentioned in the (2384) pretrial order, not only have we no copy of what you state is another proceeding and an interrogatory in another proceeding, but we think there is no foundation for this, I think at this point it's highly improper, irrelevant and incompetent.

You had Dr. Hammer on cross examination at great length, and I therefore oppose any reference to interrogatories from another case which would require a full understanding of the issues, of the

nature of the interrogatories, and we have no notice of this, you didn't set it forth, this is the very kind of thing I should think that the pretrial proceeding would give us some notice of and give us an opportunity to prepare for. I am totally unprepared for knowing what interrogatories were in some other case.

Mr. Greenspoon: Your Honor, there has been offered in evidence here by Mr. Nizer at least 15 to 20 documents which were not mentioned in the pretrial memorandum at all.

Mr. Nizer: But they were all marked in this case.

Mr. Greenspoon: Maybe so.

Mr. Nizer: Well?

Mr. Greenspoon: I suspect that we didn't (2385) have these interrogatories when Mr. Hammer was here, when we examined him before trial, Mr. Nizer read in this particular testimony which we want to contradict through this interrogatory.

Mr. Nizer: First will you read that testimony to me. May I interrupt, please? I don't know what you are referring to by your general statement.

Mr. Greenspoon: In the deposition, Mr. Nizer.

Mr. Nizer: Give us the page.

Mr. Greenspoon: I don't have it at my fingertips but I will give it to you. If that's what bothers you.

Mr. Nizer: And give us a copy of the interrogatories.

It would seem to me, your Honor, that a pretrial procedure which is to avoid surprise and may require preparation and an opportunity to submit a brief of its irrelevancy is to mean anything, means that this kind of approach at this hour without notice to us of interrogatories, of the proceeding, on the theory that we suppose, says counsel, that we didn't have it at that time, he had it

since then, you could have given us the notice at least after the pretrial order, and it isn't because of any substance of the matter, I know nothing about this, but it (2386) seems to me it's a highly improper procedure and I am completely surprised by a reference to interrogatories in another case that I know nothing about at this point.

The Court: It seems to me at this point you are not adopting the position that had been advanced by Judge VanVoorhis earlier in urging that the various letters as to which he said he had not questioned Mr. Galic should not be received in evidence because he didn't have an opportunity—

Mr. Nizer: Except that they were all given to counsel in advance, copies were marked.

The Court: I understand. You say there is a difference?

Mr. Nizer: Yes, all of those letters, your Honor, were in the pretrial order, copies were delivered to counsel—that very series—in advance, they were listed, so he certainly wouldn't be surprised by them. He had even translations given to him of them as a matter of courtesy, but here there is quite a different situation.

The Court: How long have you had these interrogatories, Mr. Greenspoon?

Mr. Greenspoon: The certification?

The Court: That isn't what I asked you.

(2387) Mr. Greenspoon: That's the date when I got it.

The Court: Certification is one thing, my question is how long has this information been in your possession.

Mr. Greenspoon: It's been in my possession since a couple of days after it was certified, and it was certified, witnessed my hand and seal this 17th day of something, 1972. I can't read the month.

Colloquy

The Court: You certainly have had it for a very substantial period of time. Why wasn't it listed in the pretrial order?

Mr. Greenspoon: Your Honor, why didn't they list—and they did not list, 25 documents which they offered in evidence, which were not listed in the pre-trial memorandum. This is purely—as I am putting it now—we would never have used it except for the fact that Mr. Nizer at pages 841 and 842 of the record read into this record from Mr. Hammer's deposition testimony matter we did not offer.

That deposition testimony is squarely and contradicted by those interrogatories. And if it hadn't been offered—

The Court: Show Mr. Nizer the interrogatories. (2388) He is unfamiliar with them he said. You look at them.

Mr. Greenspoon: They were counsel in that case out there. I think he is familiar with them anyway.

Mr. Nizer: No. No.

Mr. Greenspoon: There's the answers. Do you want the interrogatories? They are self-evident.

Mr. Nizer: Where are the interrogatories? I don't say this is a timely submission to us of this kind of matter. Also I would like to know the page that you say—

Mr. Greenspoon: I just gave it to you, 841.

The Court: Tell you what you do. You give the information that Mr. Nizer requested. He can reflect on it overnight and we will pick it up in the morning.

Is there anything else now you are going to offer? I want to avoid any further controversy.

Mr. Greenspoon: Yes, sir, your Honor.

Colloquy

The Court: Whatever else there is now suppose you present it at this time?

Mr. Greenspoon: All right, sir. We are going to offer certain interrogatories which were submitted by us to them in this case and the answers as to them, one or two I think.

The Court: What can be the issue about that?

(2389) Mr. Greenspoon: I don't know.

Mr. Nizer: I don't know what you are talking about.

Mr. Greenspoon: In this case we submitted interrogatories to—

The Court: They are going to offer answers to interrogatories as part of the plaintiff's case.

Mr. Greenspoon: Some of them, one or two, in addition to which we intend to offer a series of documents which have been marked for identification.

The Court: What are those documents?

Mr. Greenspoon: The numbers are—well, I will give you the list, that will make it simple. Or I can read them into the record.

The numbers are 3, 10, 14, 18 through 24, 35, 52, 55, 60, 61, 86, 100, 104, 105, 108, 111, 113, 119 through 121 and 186.

Mr. Nizer: What are these, so I will understand?

Mr. Greenspoon: They are mostly, primarily Lawler documents.

The Court: What are they?

Mr. Greenspoon: Primarily Lawler documents and they are primarily offered again on the issue of (2390) credibility.

Just to give one illustration, the defendants testified that—by the way, Mr. Nizer has made a great thing of the use of code, and the use of people's names other than their right names, and there the defendants testified that they didn't know anything

about and never used and didn't understand anything at all about the Gold Dust Twins. Little things like that. They are all credible items.

Mr. Nizer: Credibility against whom?

Mr. Greenspoon: Messrs. Hammer and Vaughan.

Mr. Nizer: We have all of these?

Mr. Greenspoon: Oh, yes, you have all of them.

Mr. Nizer: All right. What else?

Mr. Greenspoon: So far as I know, and Mr. Deer will wind us up.

Mr. VanVoorhis: There is one other witness. So far as we know, at the present time, we are not quite sure whether his testimony would be more appropriate in rebuttal or in direct. We will decide that tonight if we may.

Mr. Nizer: Is it confidential or would you (2391) tell us what we are talking about? Who?

Mr. VanVoorhis: Well, we will reach that when we come to it. We may not even call him on direct.

Mr. Nizer: Could you tell me who it is or would you rather not?

Mr. VanVoorhis: Well, I think that since we are not certain of calling him—I go back to a time in practicing law when we didn't have all of these pretrial papers and announcements. I don't think it's anything which will be at all surprising to you. I don't think you will be taken aback by it but I would like to consider it. We may not call him.

Mr. Nizer: Is he listed?

Mr. VanVoorhis: No, he is not listed.

Mr. Nizer: If he is not listed I am going to object without you telling me who he is anyhow.

Mr. VanVoorhis: Well, we may level some similar objections at some of your problems.

Mr. Nizer: Sure.

Now, without waiving, your Honor, my earnest objection to this kind of interrogatory from an-

other case, I would like to know, since your Honor suggested at least it be given to us tonight, whether you are going to give me the answers and the interrogatories—

(2392) Mr. Greenspoon: I gave them to you 15 minutes ago. Those are the certified ones.

Mr. Nizer: Which ones of these do you want to read, all of them?

Mr. Greenspoon: No, no.

Mr. Nizer: Could you tell me which ones so we won't waste time on them, please.

Mr. Greenspoon: The most important one is 55, but we may want to read 51, 53—51 through 55.

Mr. Nizer: 51 through 55. Are these offered to contradict what you gave me at 841 of Dr. Hammer?

Mr. Greenspoon: Item 51 is offered to contradict the deposition testimony you read in the record at 841-2.

Mr. Nizer: Item 55, what are the other ones they are supposed to impeach, so I will know, aside from the surprise of it.

Mr. Greenspoon: Nothing surprises you.

The Court: Is that the deposition in the other action?

Mr. Greenspoon: They were interrogatories, your Honor.

The Court: The answers to interrogatories (2393) in the Colorado action.

Mr. Greenspoon: Yes, your Honor. As I remember it, Mr. Rose of your office was counsel in that case.

Mr. Nizer: He was in this case, I believe. But I am not familiar with that. In any event, you said 55 goes to—

Mr. Greenspoon: Credibility.

Mr. Nizer: As at 841, which is 51 to 54 then?

Colloquy

The Court: Gentlemen, you don't really need me for that, do you?

Mr. Nizer: I thought your Honor might direct that I be told at least since I am supposed to know this—

The Court: I thought I did indicate to Mr. Greenspoon to save time that he tell you tonight what he is offering.

Mr. Greenspoon: I have told him, your Honor.

The Court: There seems to be some controversy. Do you have to argue about that too?

Mr. Greenspoon: I have already told him.

Mr. VanVoorhis: It's namely—if not exclusively—it probably is exclusively—51 through 55.

(2394) The Court: Are those pages or questions?

Mr. VanVoorhis: Yes, sir.

The Court: Questions 51 through 55.

Mr. VanVoorhis: And answers.

The Court: You are offering the answers to the questions?

Mr. VanVoorhis: That's right.

The Court: And you are offering it for the purpose of impeaching the witness with respect to matters that he's testified to on his deposition and which was offered in this case.

Mr. Greenspoon: By the defendant.

The Court: By the defendant.

Mr. Nizer: At 481.

Mr. Greenspoon: That's part of it. I can't give it all to you now because I don't have it at my fingertips.

Mr. Nizer: I don't understand it, you are offering to impeach, but I don't know what it is you are impeaching.

Mr. VanVoorhis: If you will take a look at about six lines of 55—

Mr. Nizer: 55, you told me it goes to 841. Now what is 51 to 54 addressed to?

(2395) Mr. Greenspoon: I don't have it at my finger tips.

Mr. VanVoorhis: You can read it in the length of time it takes.

The Court: This looms so tremendously large in your respective judgments that as I sit here I am wondering what is its very great significance in terms of the case. I would take it that there is scarcely a witness called to testify as to whether there isn't some contradictory or impeaching evidence offered and isn't that function of the trier of the fact ultimately to decide whether the witnesses before him or the depositions of the witnesses presented at trial on the facts, is telling the truth—

Mr. Nizer: Your Honor, the reason for my—

The Court: Taking into account all the contradictions?

Mr. Nizer: Your Honor, the only reason for my objection, since I don't even know the subject matter, is not concerned with whatever the answers are but the fact that it isn't listed, it wasn't in pretrial and I am confronted at this hour with answers to interrogatories in another case. That's my objection.

(2396) The Court: Then you are urging upon me that I should exclude it, I take it, principally because there was noncompliance with the pretrial rules, this should have been cited in the pretrial order.

Mr. Nizer: Or at least since then. I wouldn't be technical.

Mr. Greenspoon: That is not what the rules require. As I understand it, interrogatories or answers to interrogatories are not documentary evidence in the sense—

Colloquy

The Court: All right, this may dissolve overnight. We will meet tomororw morning at 10 o'clock. I can tell you now, I got word there is a judges' meeting tomorrow afternoon at 4:15, so we will adjourn shortly before that time.

(Adjourned to October 4, 1973 at 10 a.m.)

* * *

(2399) October 4, 1973
10 A.M.

The Court: Good morning, all.

Mr. Nizer: Your Honor, we have had overnight the answers to interrogatories and this morning three additional ones were given to us. We don't object to any of them.

I want to make just one brief statement about it. First, I think counsel will agree that the interrogatories that he is referring to were submitted in a complaint in an action brought by two gentlemen by the name of Raymond M. Thompson and Thomas D. Christopher, who claimed that they were responsible for or had turned up, to use our phrase, the very concessions which Galic claims he turned up. That is what these interrogatories were submitted for.

We don't think they have either impeachment, contradiction or other material, or immaterial, relevance to this suit.

So to be brief about it, despite the fact they were not submitted to us either in the pre-trial order or (2400) a long time since then, until last night, we have no objection that they be read in, including the three that were given to me this morning.

Mr. Greenspoon: We don't quite agree that that is the nature of the proceeding out there, but I don't suppose—

The Court: Let's not get into an extended discussion on it. If there is no objection to their being received in evidence, read the interrogatory first and then the answer.

Mr. Greenspoon: Interrogatory number 18:

"Did the defendant corporation have any geologic field parties working in Libya between January 1, 1960, and the time when oil concessions were first granted to Occidental of Libya, Inc.?"

Answer: "No."

Mr. Nizer: May I comment that the question calls for geologic field parties, not geologists.

Mr. Greenspoon: Interrogatory number 20:

"Did the defendant corporation have any seismograph parties working in Libya between January 1, 1960, and the time when oil concessions were first granted to Occidental of Libya, Inc.?"

Answer: "No."

(2401) Mr. Nizer: Same observation, that this doesn't call for whether there were seismographs made but whether there were seismograph parties working in Libya.

Mr. Greenspoon: 22:

"Did the defendant corporation have any gravity parties working in Libya between January 1, 1960, and the time when oil concessions were first granted to Occidental of Libya, Inc.?"

Answer: "No."

Interrogatory numbered 24:

"State specifically and in full detail the sources of geologic information used by the corporate de-

fendant in preparing its bids for oil concessions that were submitted to the Libyan Government between January 1, 1960, and the time when oil concessions were first granted to Occidental of Libya, Inc. and the names of the persons who furnished such information."

Answer: "Geological information used in preparing Oxy Libya process bid was gathered by Richard H. Vaughan during his employment with Occidental. A consulting geologist, James Lawler, of Rome, Italy, made regional studies of certain specific areas of the Cirte Basin and did stratographic work and structural evaluation for Mr. Vaughan. The bidding areas were selected on the basis (2402) of the foregoing work by Messrs. Vaughan and Lawler."

Interrogatory numbered 51:

"State the period during which negotiations were conducted with the Libyan Government for oil concessions."

Answer: "Occidental had discussions with the Libyan Government at various times during 1961 and 1963 regarding oil concessions. A sealed bid was submitted by Oxy Libya to the Libyan Government on July 29, 1965. The government announced on February 20, 1966, that Oxy Libya had been awarded two concessions then described as bid blocks 42B and 44. Representatives of the Libyan Government and Oxy Libya met during the period from February 26, 1966, until March 29, 1966, regarding the specific terms of the concession agreements. On March 29, 1966, the concession agreements were signed by the Libyan Government and by Oxy Libya."

Interrogatory numbered 52:

"State the date when the Libyan Government stopped the issuance of oil concessions and when bids for such oil concessions were reopened."

Answer: "To the best of defendants' knowledge, the Libyan Government called for concession bids during May, 1965. These bids were presented to the government on (2403) July 29, 1965, and opened publicly on July 31, 1965. The successful bidders were announced by the government on February 20, 1966, and individual concession agreements were signed from late March through mid-summer of 1966. To the best of defendants' knowledge, the last concessions called for or awarded by the Libyan Government prior to the foregoing were Concessions 90, 91 and 92 awarded to Philips Petroleum and Concessions 93, 94 and 95 awarded to Pan American Libyan Oil Company, all on April 9, 1961."

Interrogatory numbered 54—

Mr. Nizer: Are you skipping 53?

Mr. Greenspoon: Yes. You say you don't attach it—

Interrogatory numbered 54:

"State the name and address of each and every person with whom any officer of the defendants or other agent of the defendants discussed the terms of the proposed concessions with the Libyan Government, including lawyers, members of parliament, and government officials."

Answer: "The terms of Oxy Libya's concession agreements were negotiated between February 20, 1966, and March 29, 1966, with the following members of the Libyan Government located in Tripoli: Fuad Kabazi, Minister of Petroleum Affairs; Mohammed Geroushi, Techincal (2404) Director of

Ministry of Petroleum Affairs; Mustafa Kamal, Legal Adviser to the Ministry of Petroleum Affairs; and Said Shawwa, Economic Adviser to the Ministry of Petroleum Affairs."

Interrogatory numbered 55:

"State whether the proposal for oil concessions which the defendants obtained from the Libyan Government was based in whole or in part on the letter of July 16, 1963, and Exhibit A attached thereto from Armand Hammer, president of Occidental Petroleum Corporation, to Dr. Mohleddine Fekini."

Answer: "Oxy Libya's bid, dated July 29, 1965, was not in any way based on a letter dated July 16, 1963, from Armand Hammer to His Excellency, Dr. Mohleddine Fekini, or Exhibit A attached thereto."

Mr. Nizer: With respect to the last answers, I respectfully call your Honor's attention to, and I am sure your Honor remembers the exchange, page 797 of the record in this case, and I quote:

"Mr. Nizer: I regret to say, Judge—Judge Van-Voorhis—you are misreading our purpose and intention and his Honor has stated it correctly. In 1966 it was on sealed bidding. In 1963 there was no sealed bidding at all. There was supposed to be a negotiation in an (2405) informal way. We sounded out our position. We knew about it. We recited the history in answer to direct questions as to whether he had ever been in Libya before. He said yes."

Meaning Vaughan.

"You asked him what he was doing and he told you. But I make it clear, as his Honor put it to both of us, we do not claim that the sealed bids

were accepted because of anything that was done in 1963.

"Now, if that satisfies you, we are agreed on the whole matter. We do not claim that.

"We say that the concessions we got were based upon the application which is in evidence, the preference is not yet in evidence but will be in a few moments—the preferences and the contents of that application, which is a huge volume and another volume. That was all that influenced the determination of the concessions and without Galic having anything to do with it, is our position.

"So, therefore, going back to 63, except as a bit of history which you brought out and I would be glad to bring it out as history, has no relevance to this issue.

"The Court: I think Mr. Nizer's statement is a pretty direct statement on this.

"Mr. VanVoorhis: It is a pretty direct statement, (2406) considerably more direct than anything he has made heretofore."

Mr. Greenspoon: The problem with that, your Honor, is very simple. Pages 841 and 842, the defendant read into the record from Dr. Hammer's deposition, and I don't have the question and answer, I only have it summed up, that the ammonia plant and fertilizer program submitted to the Libyan Government in 1965—

Mr. Nizer: Where are you reading from?

Mr. Greenspoon: From a memorandum I made of testimony that you read in at pages 841 and 842.

Mr. Nizer: Please read the page.

Mr. Greenspoon: I don't have it in front of me.

The Court: Isn't it here right now?

Mr. Greenspoon: Yes, sir.

The Court: Why should there be any controversy about that?

Mr. Nizer: I will read it, if you want.

Mr. VanVoorhis: It is right here, your Honor, and it will take a moment to get it for you.

Mr. Nizer: I will read it for you. This was not read in by me, it was read in by counsel from a deposition—

Mr. Greenspoon: Offered by you.

Mr. Nizer: And without objection. You put it in, (2407) stating this was offered by us and you didn't object. That is not important, but I just correct the record. Then what you read in was a concept in 1963, and let me read it. This is the exact reading of it, 841:

" 'Q. When was that concept conceived? A. I would say just shortly before we filed our bid.

'Q. Could you fix a more precise date than that? A. Some time, I would say, in the last few weeks before the bid was submitted.

'Q. Some time in July, 1965? A. Yes.

'Q. Is that correct? A. Yes, sir.

'Q. When for the first time was the concept of the ammonia plant and fertilizer program conceived? A. I would say in 1963.

'Q. Where and by whom was that conceived? A. That was conceived principally by me, together with the help of our engineers and people in our fertilizer division.

'Q. Was a proposal in connection with such an ammonia fertilizer program submitted by you or Occidental to the Government of Libya in 1963? A. To the best of my recollection, it was.

(2408) 'Q. Was there any further development of that concept set forth in the 1965 proposal as compared with the 1963 informal proposal? A. No. I think it was substantially the same.' "

Now, there was no Kufra proposal. The concept of an ammonia plant, fertilizer, of course was the

same in both instances. So we find nothing in this that calls for the kind of claim of contradiction or impeachment you are talking about. It is perfectly consistent with what was stated and this is the exact record.

• • •

(2409) JAMES W. DEER, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. VanVoorhis:

Q. Mr. Deer, you are an attorney and counsel at law? A. Yes, sir, I am.

Q. And a member of the firm of Holtzmann, Wise & Shepard? A. That's correct.

Q. Of this city. Where is your office? A. At 30 Broad Street, New York, New York.

Q. And how long have you been associated with that firm? A. I first came to that firm in February of 1947.

(2410) Q. And you have been a partner of it for approximately how many years? A. Oh, probably 18, 19 years.

Q. What was your legal experience prior to your becoming associated with that firm? A. I graduated from the University of Michigan Law School, Class of 1941. I practiced one year in Ohio, and in 1942, I was employed at the staff of—

Q. Speak up a little bit lounder. A. —I was employed at the staff of the general counsel of the Securities and Exchange Commission, and in 1945, I came to New York City, and was with the firm of Fulton, Walter & Halley until February 1, 1947.

Q. What specialities if any have you been chiefly engaged in in the practice of law? A. Mainly Securities Act work, general corporate work.

Mr. Nizer: I can't hear you.

The Court: You are dropping your voice, Mr. Deer. Won't you please speak out so everybody can hear you.

The Witness: I am sorry.

A. I generally do work in connection with Securities (2411) and Exchange matters, and general corporate matters.

Q. Is your firm general counsel to Allen & Company? A. Yes, it is.

Q. Both the partnership and the corporation? A. Yes, it is.

Q. And I would ask you to what extent in general terms your own time was devoted to their interests? A. Oh, probably about 50 per cent.

Q. I show you a letter from Occidental Petroleum Corporation to Mr. Herbert Allen, dated July 16, 1965, which is marked P124 in evidence in this case, and ask you if you have seen that letter before. A. Yes, I have.

Q. Will you tell us the time, place and circumstances, as nearly as you can recollect, when you first saw it? A. I saw this letter at the office of Allen & Company shortly after it was received, probably around July 18, 1965.

Q. And what was the occasion, who was present? A. Mr. Herbert Allen was present, and he asked me to read the letter and the attachments and to advise him what legal effect they had.

Q. Can you state as to where this discussion (2412) occurred? A. Well, this discussion took place in the office of Mr. Herbert Allen.

Q. Was Mr. Charles Allen or anyone other than Mr. Herbert Allen and yourself present at any time? A. Mr. Allen came in at some point during the discussion.

Q. You mean Mr. Charles Allen? A. Charles Allen, yes.

Q. Tell us as nearly as you can recollect just what was said in substance and by whom. A. Well, I repeat that Mr. Herbert Allen asked me to read the letter and to

advise him as to its effect, and after I read the letter I asked him to bring me the entire file relating to this Occidental Petroleum joint venture matter, and he had his secretary bring it. I then read through the file and after reading it I advised him that in my opinion this did not have any legal effect at all, and did not require any answer or action on his part.

He then asked me to relay the same information to Charles Allen, which I did. I have forgotten now whether Mr. Allen came in or we went to his office, which was (2413) nearby. And I repeated the advice and then Mr. Charles Allen said that he expected to see Dr. Hammer shortly and would relay that advice to him.

Q. Is that the extent of the conversation insofar as you recall it? A. Yes, it is.

Q. Now, you said that you did call for the file. A. Yes.

Q. Did you make any examination of its contents at this time? A. Yes, I read the file before I gave the advice.

Q. Do you recall what was in the file? A. Well, there were some letters in the file relating to the formation of the joint venture, some correspondence in November, I think 1964, December 1964. There was a letter in there from Klehe & Company for a telegram with some information about General DeRovin in it; that's about all I can remember at the moment.

Q. I show you a document dated December 17, 1964, known as P71 in this case, and ask you whether or not that is the document to which you referred as relating to the formation of a joint venture? A. Yes. This document was in the file.

Q. Is that the document to which you referred? (2414) A. Yes.

Q. Now I show you a letter signed by Herbert Allen addressed to Dr. Armand Hammer, dated March 16, 1965, which is Exhibit P97 in this case, together with an annexed communication with Klehe & Company at the top,

dated March 9, 1965, and I ask you whether or not that is the reference, that is the document that you referred to with respect to Klehe & Company and General DeRovin? A. Yes, it is.

Q. Both the letter from Herbert Allen and the annexed communication, is that it? A. Yes, that's right.

Mr. Nizer: May I see that, please, Judge.

Q. Now, when did you next discuss any aspect of this matter with the Allens as nearly as you can recall? A. In October or November, 1966, Charles Allen and Herbert Allen asked me to review the entire Occidental Petroleum joint venture with Allen & Company and to give them my advice.

Q. What happened at that time, approximately when was it, October or November? A. That's about as close as I can fix it, late October, early November.

Mr. Nizer: What year?

(2415) Mr. VanVoorhis: 1966.

A. 1966, yes.

Q. Will you tell us what occurred at that time, when and where, and insofar as you can recall who said what with respect to the conversation? A. Well, I think Herbert Allen simply asked me to review the entire matter and to advise him the status of it and their rights and duties, if any, under the joint venture. And I said I would do it. A. Right.

Q. Rights against Occidental Petroleum Corporation?

Q. What did you do then? A. Well, I then asked them to send me all the files that had any bearing on it, the files of Allen & Company, files of Allen & Company Incorporated, and which they did.

Q. At this time you sent for the files of Allen & Company, Incorporated, is that correct? A. That's correct.

Q. Did you make a study of the contents of these files and of the subject matter? A. Yes, I did.

Q. Of their rights with respect to Occidental Petroleum Company? (2416) A. Right.

Q. And the joint venture? A. Right.

Q. Now, tell us in substance what you did, what you read and what communications, if any, there were between you and the Allens with respect to this. A. Well, after I had examined the written documents which were in the file—

Q. You might enumerate them at this time, if you will. A. Well, there was the basic joint venture agreement of December 27, 1964, there was the correspondence that you alluded to before in July of 1965, the purported termination, there was a letter in there in which—

Q. Incidentally, did the purported termination or abandonment have annexed to it telegrams from Occidental Petroleum addressed to General P. DeRovin and also to Ferdinand Galic? A. Right, and signed by Occidental.

Q. All right. Continue, tell us what else. A. There was a letter in the file, a copy of a letter in the file from Mr. Kabazi to Ferdinand Galic, dated I think February, some time in February 1966.

(2417) Q. I show you Exhibit P159 in evidence in the case and ask you whether that is the same document that you just were mentioning? A. Yes.

Q. What was the answer? A. Yes.

Q. What other documents? A. Well, in the Allen & Company Incorporated file there were some registration statements, prospectuses, questionnaires and other correspondence relating to several different financings in which Allen & Company Incorporated had been one of the managing underwriters. These were financings on behalf of Occidental Petroleum.

Mr. Nizer: Can you fix the date of this examination of the file? I am not sure you did.

The Witness: I think it commenced toward the end of October or early November.

Mr. Nizer: When you say "commenced," I don't want to interfere—

The Court: You better reserve your questioning for cross examination.

Mr. Nizer: All right, your Honor.

Q. I take it that the underwriter's questionnaire and the prospectus to which you referred were contained (2418) in the Allen & Company Incorporated files? A. That is correct.

Q. Had you—

The Court: Now, you ask a question. The witness stated that is correct, and I am not sure I understood the answer. You said contained in what files.

Mr. VanVoorhis: I will ask him.

Q. In what file were the underwriter's questionnaire and/or the—

Mr. VanVoorhis: Will your Honor pardon that expression "and/or"—it sometimes serves a purpose—

Q. And/or the prospectus contained in what file? A. They were in the file of Allen & Company Incorporated. Allen & Company Incorporated had acted as the underwriter on those issues.

Q. Had you examined that file in July of 1965 on the occasion to which you previously testified when you were asked concerning the July 1965 letter from Occidental? A. No, I did not.

Q. I show you Exhibit D8 bearing date May 11, 1966, entitled "Underwriter's Questionnaire" and ask you if that is the document to which you referred by that title a moment ago? (2419) A. Yes. This is one of the questionnaires I saw.

Q. Was there another? You mean in regard to this—whether there has been more than one questionnaire with

respect to this issue? A. Yes, there were several financings. I think there was—

Q. No, I said this issue. A. Oh, this issue. No, this was the only question on this issue which related to $62 million convertible subordinated debentures.

Q. You were saying when I interrupted you that there were some other financings. A. Yes, I think there was at least one other one, maybe more in the file I saw. They were earlier.

Q. Do you recall the year? A. There was a common stock financing, which I think became effective in January of 1965. There was a questionnaire for that financing too.

Q. I show you Exhibit D11 in evidence in this record entitled "Prospectus $61,168,300, Occidental Petroleum Corporation," and ask you if that is the prospectus to which you just referred in your testimony pertaining to (2420) this issue? A. This is the prospectus which related to the debenture issue, dated June 17, 1966.

The Court: That doesn't refer to what you just mentioned as the common stock issue?

The Witness: No, it does not. That I think—

The Court: It related to the questionnaire?

The Witness: To this questionnaire, yes.

Q. The same issue as that to which the questionnaire relates, is that correct? A. That's correct.

Q. Now I ask you whether or not you had seen either of these documents D8 or D11 prior to this occasion? A. D8 being the questionnaire and D11 being the prospectus?

Q. Correct. A. I had not seen the questionnaire before. I believe that I had seen the prospectus some time shortly after it was issued, maybe in July of '66.

Q. Have you seen either of these documents prior to the debenture bond issue of June 11, 1966? A. No, I had not.

Q. Did you have any conversation with Mr. Herbert (2421) Allen with respect to either of these documents at any time prior to the occasion in October or November to which you were referring? A. No.

Q. Did you have any conversation with Mr. Charles Allen with respect thereto? A. No.

Q. I notice that the underwriter's questionnaire dated May 11, 1966, D8, purports to have been signed by one Herbert L. Stern, vice-president, on behalf of Allen & Company Incorporated.

Did you know Mr. Stern? A. Yes, I did.

Q. And what position did he hold with Allen & Company Incorporated? A. He was a vice-president and director and I believe also treasurer of Allen & Company Incorporated.

Q. Was he what was known as office manager? A. I think that would be a fair characterization.

Q. Did you have any discussion with respect to either D8 or D11 with Mr. Herbert Stern prior to the issuance? A. No, I did not.

Q. Of this bond issue? (2422) A. No, I did not.

Q. Did anyone else connected with either Allen & Company, partnership or corporation, insofar as you know, have any such conversation with Mr. Stern or with either of the Allens? A. Not to my knowledge.

Q. Now, in preparing to express an opinion in response to the inquiry made of you to which you testified by the Allens in October-November 1966, what if anything further did you do? A. Well, after I had read the documents in the file I told Herbert Allen that I would have to get more factual information and that I wanted to talk to Ferdinand Galic, and they told me Mr. Galic lived in Paris but came to New York from time to time and that upon the next occasion when he came I would get the opportunity to talk to him. They didn't know exactly when he might come.

Q. Did you communicate with Mr. Galic in reference to this phase of the matter? A. I asked Mr. Charles Allen if he would either call or write to Mr. Galic to ask Mr. Galic to furnish the information either in writing or to come to New York and sit down and have a conference with me.

(2423) Q. I show you a letter dated December 2, 1966, signed Charles Allen, addressed to Ferdinand Galic, which is P189 in this record, and ask you if you prepared that letter for Mr. Charles Allen to sign? A. Yes, I did.

Q. And subsequent to that, did you meet with Mr. Galic? A. Yes.

Mr. VanVoorhis: When I referred to P189 in evidence I should have said for identification.

I offer it in evidence now.

Mr. Nizer: I object to it, your Honor. It is a self-serving document prepared for this very litigation, apparently dated December 2, 1966, and hearsay and not binding upon us, a self-serving document.

The Court: It clearly is that. I don't think there is any question about it.

Mr. VanVoorhis: Well, we had been told that the litigation wasn't prepared for until December—January 31, 1967.

Mr. Nizer: That is not what you were told.

Q. Did you meet with Mr. Galic subsequent to that? A. Yes, I did.

Q. And can you tell us approximately when and where (2424) and how many times? A. I met with Mr. Galic, to the best of my recollection, some time around the middle of December 1966 and again in January of 1967, and once more several months later than that, maybe the summer of 1967.

Q. I show you a letter dated December 6, 1966, P190 for identification, and ask you if, to your knowledge, that

letter signed Ferdinand Galic, and addressed to Charles Allen, was received in reply to the letter of December 2, 1966, P189?

Mr. Nizer: Mr. Allen was on the stand and was not asked this question. Now the question is being asked whether Mr. Allen received it.

Mr. VanVoorhis: I said to his knowledge.

Mr. Nizer: Of course you said that.

Q. What is the answer? A. Yes.

Q. I think you said that you met Mr. Galic to your best recollection about on three occasions with regard to this? A. Yes, I did.

Q. Can you give us any more exactly the dates or the times of those conferences? (2425) A. Well, not more accurately than I did fix them. I think the first one was around December 15, the second one some time in January, probably the latter part of January, and the third one a number of months later, I believe the summer of 1967.

Q. Did you at some time report to the Allens with respect to or in answer to this inquiry with regard to their rights as against Occidental?

Mr. Nizer: Just yes or no, did you report it?

A. Yes.

Q. And approximately when was that? A. About the middle of January.

Mr. Nizer: Will you mention the year, please.

The Witness: January 1967.

Q. Now, some question has been raised with respect to this questionnaire, Exhibit D8, Paragraph 3, subdivision (a), in regard to whether any of the directors, officers or partners of Allen & Company Incorporated have a material relationship with the company, or whether any of them had been during the previous three years an officer or director of the company, that is the corporation, or an

associate as defined in 405 of the Securities and Exchange Commission, of any of its officers or directors or any person who to their knowledge, to the knowledge of the corporation, that (2426) is, owned of record or beneficially as of March 31, 1966, more than 10 per cent of any class of voting securities of the company.

When you saw this questionnaire, did you notice that statement contained therein? A. Yes, I did.

Q. Incidentally, is a questionnaire itself such as D8 expressly required by any rule or regulations of the SEC? A. No, it is not.

Mr. Nizer: Excuse me, may I have that question again, please?

(Question read.)

Mr. Nizer: I object to the question with respect to the law on this, but if the witness wishes to become certain on this, why, very well.

Q. In view of a controversy which has been raised over this matter, will you tell us whether in your opinion there was or was not to your knowledge as of March 31, 1966, any material relationship between the partners of plaintiff or any of them and Occidental Petroleum Corporation?

Mr. Nizer: I object to that, your Honor.

The Court: I wouldn't think you would object (2427) to that question at all, Mr. Nizer. I would think you would want to examine the witness.

Mr. Nizer: It is the province of the Court.

The Court: Don't defer to me. It would seem to me you might want to question him about it yourself.

Mr. Nizer: I intend to if the question is allowed.

The Court: I didn't hear your last remark.

Mr. Nizer: I intend to press him on this if the question is allowed, but I thought he was invading the legal province of the Court. I wanted to record

my objection on this question, his giving the law on this subject. If that is the purpose for which he is called, of course my cross examination will be similarly permissible, I am sure.

The Court: I will take his answer. There has been testimony on it.

Mr. VanVoorhis: Perhaps you better read the question again.

The Court: Do you understand the question? Do you need the question reread?

The Witness: I don't think so.

Mr. VanVoorhis: All right, then don't do so.

A. This questionnaire asked whether or not as of (2428) March 31, 1966, there was a material relationship between Occidental and the underwriter and that also would include Allen & Company in this case. There are two concepts there, material and relationship.

Now, material is defined in the rules and regulations of the SEC, the relationship is not. And I don't think that this joint venture agreement between Allen & Company and Occidental gave rise to a relationship which is intended within the meaning of that questionnaire, and even if it did, I don't believe it was a material relationship.

Now, there are other—strike that, if you will.

In the basic registration Form S1 there is an item which calls for disclosure of underwriting arrangements, and in that item, it asked for a disclosure of any material relationship between the underwriter and the issuer. It does not ask whether or not there are any material contracts between them, it doesn't ask whether or not there are any material transactions between them.

Mr. Nizer: Any material what?

The Witness: Transactions, I am sorry.

A. (continuing) Material contracts, material transactions are called for at a different place in the (2429) regis-

tration form. But this asks only for a material relationship, and it is customary when answering that question for issuers and underwriters to describe a more basic or inherent relationship that may result, perhaps not even from a transaction or from a contract, but from a result of control or large stock ownership, something of that nature.

So, I don't believe that this was a type of relationship that is called for either in the questionnaire or in the form, the basic SEC registration form.

Now, as to whether or not even assuming it is a relationship, it is a material relationship, the word "material" is defined in the SEC rules.

I think the rule says that when the word "material" qualifies information which is required to be furnished, the information to be furnished is limited to those items as to which an average prudent investor ought reasonably to be informed before he purchases the registered security.

Now, there have been quite a few cases in the Federal Courts that give some content to that word "material."

Perhaps one of the leading cases SEC vs. Texas Gulf Sulfur, and in that case it was said very clearly that in order for a fact to be material it had to be (2430) extraordinary in nature and reasonably certain to materially influence the market value of the security.

Now, if you examine this joint venture agreement between Allen & Company and Occidental by any test as to whether or not it was material as an asset of Occidental, something that ought to be considered by an average prudent investor, whether it was material to Allen & Company itself, either from the standpoint of being an asset or from the standpoint of being a liability, I don't think it meets that test of materiality of being something which is very extraordinary and likely to influence the market value.

Getting a little more specific on that, that questionnaire asked for material relationship as of March 31, '66. My recollection is that this concession had been granted in Libya on March 29. Certainly there had been no geological, geophysical surveys of the property prior to that time. There were no proved reserves. There was nothing to indicate that this would add to the demonstrated earning power of Occidental. There was not anything which the average prudent investor could give any value to. There was not anything that Allen & Company, under the rules of the SEC could put on its balance sheet.

They are very strict rules as to whether they (2431) can call assets when they figure their net worth.

It was at most a hunting license, maybe only just a lottery ticket, and it couldn't be ascribed any value—

Mr. Nizer: What was that after the hunting license?

The Witness: I said maybe only a lottery ticket.

Mr. Nizer: Like a lottery ticket?

The Witness: Lottery ticket, I am sorry.

(2432) By the Court:

Q. What are you referring to as a lottery ticket? A. The concession.

Q. Weren't part of the proceeds of this underwriting going into the Libyan oil fields? A. Yes, and I might call—

Q. And you say that an investor would not be interested in knowing whether the proceeds of money being put up by the public would go into a lottery ticket? Wouldn't that be material? Is that what you are saying? A. No, no, I am not saying that.

Q. I think you better clarify what you said just now. A. All right, I will try to do that.

Q. From what I understood this morning, your testimony would be with an SEC background. A. Incidentally, this questionnaire was signed by Mr. Stern on May 11, 1966. At that time Occidental had filed a registration

statement with the Securities and Exchange Commission, I believe on May 3, 1966, and this is the registration statement and preliminary prospectus which Mr. Stern had in front of him when he signed his questionnaire.

Q. Were you there when he signed it? (2433) A. No.

Q. You say this was what he had in front of him? A. Well, all the underwriters had the registration statement, underwriting agreement, and questionnaire.

By Mr. VanVoorhis:

Q. The question is, were you there when he signed it? A. No. No, I was not. Incidentally, that registration statement and preliminary prospectus dated May 3, 1966, does not indicate that any specific portion of the proceeds of the offering will be used in this exploration.

By the Court:

Q. I have not seen this for a little while. The trial started some weeks back, but the exhibit itself, which is in evidence, is at page 32, is it—

The Court: What page is that?

Mr. Pollio: Page 9, your Honor.

By the Court:

Q. Is there any reference there at all to the use of the proceeds? A. Well, I would like to clarify this. I believe you are looking at the final prospectus, which is dated June 17, 1966. There is a vast difference between the Use of (2434) Proceeds Section in that prospectus and the preliminary prospectus which the company filed on May 3, 1966, and is the only one that Mr. Stern could have had in front of him, if he did have it in front of him at the time. I don't know whether that is in evidence or not.

The Court: All right.

The Witness: What I meant to say, by referring to it as a hunting license or a lottery ticket is that simply under the rules of the SEC a registrant is not able to claim any proved reserves simply upon the basis of having a concession which does no more than give him the right to explore. He can't claim any reserves, any projected income as a result of it.

As far as Allen & Company is concerned, they couldn't take an investment, if they had made an investment, and attribute value on it on their books for the purposes of computing their net capital as a broker-dealer, under the rules.

By the Court:

Q. Wouldn't an average investor be interested in knowing whether or not one of the underwriters claimed a financial interest in a project in which some of the funds were planned to be used? A. If it were a material amount, he might.

(2435) Q. Well, what is the amount under that registration statement?

Mr. VanVoorhis: Your Honor—

The Court: I am asking the witness now, as long as it came up at this point.

A. Under the Use of Proceeds Section, it said that the company intended to spend approximately $15,000,000 exploring for oil and gas, not specifying the area where they would explore for oil and gas. The prospectus itself indicated that it had a number of different areas in the world where it did have concessions.

By Mr. VanVoorhis:

Q. Have you finished, Mr. Deer? A. I don't think I covered the aspect of the joint venture agreement perhaps giving rise to potential liability. I don't believe that the existence of the joint venture agreement, the failure

to disclose Allen's participation in the joint venture agreement would have prejudiced any investor from the standpoint of knowing the liabilities of the issuer, because if they spent a considerable amount of money and got nothing but dry holes, the fact that Allen & Company had a 25 per cent interest would limit the amount of the loss. So an investor would not have been prejudiced by the failure to disclose it, if (2436) it were material. I don't think it was material.

Q. Incidentally, is the underwriter's questionnaire required to be filed with the SEC? A. No, it is not.

Q. It goes to the lead underwriter and the issuer, is that correct? A. Yes, it does.

Mr. VanVoorhis: You may cross examine.

Cross Examination by Mr. Nizer:

Q. Mr. Deer, the first prospectus is what is called a red herring? A. That is correct.

The Court: Called a what?

Mr. Nizer: A red herring.

Mr. VanVoorhis: That is a term of art.

Q. And when there is a subsequent prospectus which is final, then isn't there usually an amendment of the questionnaire sent by the underwriter to the lead underwriter? A. I don't believe so.

Q. You don't? A. No.

Q. Don't you have to bring it up to date so that (2437) the questionnaire advises the lead underwriter of changes between the red herring and the final prospectus? A. Well, that might be a good practice. I think that it is very rarely done. Usually there is only one circulation of the questionnaire, fairly early in the registration process and, as in this case, shortly after the original filing.

Q. That may be when you say usually in the event that there isn't a change of the information in the ques-

tionnaire, but I took it from your answer to his Honor a few moments ago that you tried to make a distinction between the information in the preliminary one and the information in the final one. Didn't you do that? A. Yes, because I thought he had asked me whether or not the Use of Proceeds Section—

Q. I know why— A. I pointed out a difference between the final and the original.

Q. Are you familiar with the fact that in this pre-trial order, item 32, it states that "Allen & Company, Incorporated did not sign any other questionnaire or change the statement quoted in item 29," which, of course, is the one that you quoted and, "Neither we nor any of our directors, officers or partners have a material (2438) relationship with the company in any document signed by it in relation to said offering of debentures"? Were you familiar with that stipulation in this case in the pre-trial order? A. No, I am not familiar with the pre-trial order.

Q. Would you describe to his Honor, while we are on this point, what the words "due diligence" mean in connection with the requirement of questionnaires and prospectuses and underwritings? A. I think the word "due diligence" is a word commonly employed as being the duty of underwriters to examine everything to make certain that a registration statement and prospectus is accurate. It comes, I think, from the wording in Section 11 of the Securities Act, which imposes very heavy liabilities upon a whole series of people, including the corporation, every officer, the chief financial—every director, whether or not he signs, the accountants, any experts, and the underwriters for any misstatements which are in the registration statement.

Q. Or omissions? A. Or omissions.

Q. It is a very strict requirement? A. It is very strict, but then it says that an (2439) underwriter, and perhaps others on whom liability is imposed, may avoid that liability if they have used or can prove that they

used due diligence in preparing the registration statement. So, therefore, that is what due diligence means, to examine.

Q. But such due diligence must be directed to the final prospectus, not to any preliminary red herring prospectus, isn't that correct? A. Well, I think so, yes.

Q. I am going to come back to this subject, Mr. Deer, but, first, between September, 1964, and January, 1967, you rendered legal services for both Allen & Company, the partnership and Allen & Company, Inc., the corporation, did you not—legal services? A. That's correct.

Q. And also for Charles and Herbert Allen individually? A. Upon only the rarest occasion would there be any personal services to them.

Q. When you referred to the 50 per cent of your time which you devoted to these clients, the company, the partnership and, on those rare occasions, the Allens, I take it that you meant that in connection with both their corporate and partnership affairs you were their legal adviser? (2440) A. That's correct.

Q. And you have told us that you have specialized, your field of legal competence, in the SEC work; how long have you been doing SEC work for Allen & Company, the partnership? A. Since February, 1947.

Q. How long have you been doing SEC work for Allen & Company, Inc.? A. Since its formation in 1964.

Q. During your representation of these two companies, and perhaps the Allens on some occasions, have you prepared, reviewed and processed hundreds of registration statements and prospectuses? A. Probably—hundreds sounds like quite a few. It would probably be measured in many dozens.

Q. You keep up to date, do you, with the security law and the various cases? You have indicated your knowledge of the Texas Sulfur case on one point—do you keep up to date and see to it that you are familiar with the developments of the law in this field? A. I try to.

Q. Are you, through your law firm, a subscriber to the Federal Securities Law Reports published by the Commerce Clearing House? (2441) A. Yes.

Q. And you read that, I suppose, pretty zealously? A. I read it.

Q. And this contains particularly current decisions on the security law developments, does it not? A. Right.

Q. It also contains rulings of the SEC, does it not? A. Right.

Q. And you have been reading such material for many years, dating back at least to 1964, isn't that right? A. That's correct.

Q. Have you attended special courses or seminars on security law? A. Very rarely.

Q. Did you ever discuss corporate matters of Allen & Company, Incorporated, with Charles Allen? A. Yes.

Q. Did you ever discuss corporate matters of Allen & Company, Incorporated, with Herbert Allen? A. Yes.

Q. I am sure that that would be so. Did Charles Allen ever participate in the affairs of the corporation, Allen & Company, Incorporated? A. Yes.

(2442) Q. Did Herbert Allen also participate in the affairs of Allen & Company, Incorporated? A. Yes.

Q. Did you ever prepare any registration statement or prospectus of the issuer when either the partnership or the corporation was the sole or lead underwriter? A. I am not sure I understand the question. You asked whether or not I prepared it for the issuer when Allen & Company was the sole underwriter?

Q. That's right—no, not for the issuer, whether you prepared a registration statement or prospectus when either the partnership or the corporation was the sole or lead underwriter. A. Yes. I would have to qualify that by saying that normally where you represent the underwriter, whether he is the sole or one of a group, the prospectus is prepared by the issuer. When you

represent the underwriter, it is more or less reviewing it as distinguished from preparing it.

Q. I understand that, sir. But you have, nevertheless, even in those instances, prepared prospectuses of the issuer when either the partnership or the corporation was the sole or lead underwriter, haven't you? A. I think so, yes.

(2443) Q. Did you ever review any registration statement or prospectus in which either the corporation or the partnership appears as one of the underwriters instead of being the lead underwriter or sole underwriter? A. I can't recall any occasion where we prepared—if I understand your question, you are asking whether I ever reviewed a prospectus where Allen & Company was an underwriter, one of a group of underwriters, but not the lead underwriters?

Q. Yes, where either the corporation or the partnership appeared as one of the underwriters. A. But not the lead underwriter? Was that part of your question?

Q. Either way. All right, first— A. Well, I have reviewed many prospectuses where Allen was one of a group of underwriters, usually the lead underwriter. I don't recall any occasion where we reviewed a registration statement where Allen was one of a group of underwriters but not the lead underwriter.

Q. Well, at page 6 of your deposition this question was asked of you:

"Q. Did you ever review any prospectus in which either the corporation or the partnership appear as one of the underwriters?"

(2444) And you answered:

"A. Yes."

Is that correct? A. I think it is correct, yes.

Q. And you stand by that answer? A. Yes. I think, Mr. Nizer, to clarify it, there may have been one or two

occasions, and I think one of them involved Occidental, where Allen & Company was not the lead underwriter but we did represent the underwriting group.

Q. Is it correct to say that under the SEC statutes and rules the information set forth in the registration statement must be true and complete? A. Yes.

Q. It is not the duty of counsel advising, and of the underwriter, to make the registration statement true and complete and isn't that the duty of both the issuer and the underwriter? A. Yes, it is.

Q. Is it not the function of the attorney representing the underwriter to use due diligence to assure that the registration statement or prospectus is true and complete? A. Yes, it is.

The Court: Mr. Nizer, I think we will take our mid-morning recess at this point.

(Recess)

(2445) By Mr. Nizer:

Q. You have just told us that it is the function of an attorney representing the underwriter to use due diligence to assure that the registration statement or prospectus is true and complete, that is right, isn't it? A. Yes.

Q. Now, this is so whether the underwriter—client is a lead underwriter or only a member of the underwriting syndicate, isn't it? A. Right.

Q. And is it not a requirement of the SEC statutes and rules that the registration statement or prospectus must disclose any material relationship existing between the underwriter and the issuer? A. That is correct.

Q. Do not the same statute and rules require that whenever the material relationship is evidence by a writing,

a copy of such writing must be filed with the SEC as an exhibit annexed to the registration statement, that is right, isn't it? A. I am sorry, would you state that again?

Mr. Nizer: Would you be good enough to read it back.

(2446) (Question read.)

A. I am not certain that is true.

Q. Pardon? A. I am not certain that is true.

Q. What is your opinion? A. Your question is if the material relationship is evidenced by a writing, that there is a requirement of the Commission that the writing—

Q. Copy of such writing must be annexed as an exhibit to the registration statement, under the SEC rules, you are not familiar with that? A. I don't know of such a requirement.

Q. Your best opinion is that there is no such requirement? A. That's right.

Q. Pardon? A. Yes.

Q. Where there is a failure to disclose a material relationship between the underwriter and an issuer, the registration statement would be deemed incomplete, untrue and result in that severe penalty liability that you have already described, wouldn't it? A. It would be incomplete and could result in (2447) penalties.

Q. Did you ever question the truthfulness or completeness of the prospectus D11? A. No.

Q. Did you raise any question concerning any factual matter omitted from the prospectus D11 which was then known to you? A. At what time? At any time?

Q. At any time. A. Did I raise a question with whom, anybody? No.

Q. What is the function of an underwriter's questionnaire? A. The function of an underwriter's questionnaire is to elicit information from members of the underwriting group which may have a bearing on the accuracy

and completeness of the prospectus, so that on the basis of the information elicited, the registration statement and prospectus can be accurately and completely prepared.

Q. So that where there are a number of underwriters, and one is the lead underwriter, the other co-underwriters submit this questionnaire to the lead underwriters to aid it in its responsibility, which they can join in, of course, to see that it is complete and accurate, is that right? (2448) A. That's correct.

Q. So that the specific knowledge of whether an underwriter's officers and directors have any relationship, material relationship with the issuer, is funneled through those who have the best knowledge to be certain that the prospectus becomes accurate and complete, right? A. That is correct.

Q. Now, you have prepared underwriters' questionnaires, haven't you, for the Allen Companies? A. Yes, I have.

Q. And you prepared them both for the partnership and the corporation, haven't you? A. That's correct.

Q. Did you ever have any discussion with Charles Allen with regard to the preparation of underwriter's questionnaires? A. Yes.

Q. Did Charles Allen ever under your guidance as counsel, sign any of the underwriters' questionnaires prepared by you? A. I believe he did, but—

Q. There came a time in the fall of 1966, when the press announced the finding of some oil in Libya by (2449) Occidental. Do you recall that? A. Do I recall now that they did it then?

Q. That there was an announcement at that time in the fall of 1966 that oil had been discovered by Occidental in Libya? A. Well, I recall that an announcement was made.

Q. And that would be in the fall of '66 or October '66, which? A. I am not clear whether you are asking me whether I knew it then or not.

Q. Yes, yes, if— A. If that is what you are asking me—

Q. Yes. A. —I did not know it in the fall of '66. I recall now that they did make such announcement.

Q. Well, did you then or—pardon me. Let me read to you this question and answer that you gave to see if it refreshes your recollection as to this to some extent. At Page 33, you were asked: "At the time, Mr. Deer, that you called for this questionnaire to look at it, the underwriter's questionnaire, which is Defendant's Exhibit 8, and the prospectus which is Defendant's Exhibit 11, had Occidental already discovered oil in Libya? A. In October of '66, I don't know, I think (2450) it was on or about that time. But I don't recall."

Did you make that answer to that question? A. Yes. I made that answer.

Q. And does it refresh your recollection that while you weren't absolutely certain you thought that at or about that time in October '66 that you did learn of it, is that correct? A. Well, I am not certain that what you are reading indicates that I testified that I knew about it then. My best recollection of my knowledge about their discovery of oil is that some time in January of '67 I was told that there had been an announcement that there had been some oil discovered by Occidental in Libya back in November.

Q. Well, I was coming to that. That was the big gusher. In January '67, to be precise, on January 31, 1967, there was a very large announcement of a very huge find of oil. That was the second announcement. A. That is correct. But I think I also testified in that deposition that you have that I didn't learn until—maybe around January 20, some time in the latter part of January, that they had announced the finding of oil in November.

Q. In any event, there were two announcements of the discovery of oil by Occidental in Libya, and you know

(2451) that now in any event, and you knew it in January '67 some time? A. Yes.

Mr. VanVoorhis: Well, which? The question is ambiguous.

Q. You knew it at least as you said, you are sure in January '67, is that right, that you were told that there were two discoveries, one in October or November, there was an announcement of some discovery, and in January 31, a very huge discovery was announced, is that correct? A. Yes. But the latter, the huge one, I don't believe was announced until January 31 itself. I think maybe ten days before that I had heard of the earlier one.

Q. Now, shortly after the announcement of the smaller discovery of oil in the fall of '66, there were a series of conferences held among the Allens, Mr. Holtzmann, yourself and Mr. Galic, were there not? A. Well, there is a number of things involved there. I don't know that Mr. Holtzmann was involved in any. Maybe he was. But not to my knowledge. Not to my knowledge.

Q. Well, we will come back to that, but let's at least get this—with that exception, is my— A. The matter was under review. I was studying (2452) the file and I had had some conferences with Mr. Galic, and—

Q. No, no, I know you are trying to be responsive. A. I am sorry.

Q. Let me put that question more directly. My question is not whether you were studying the file. There were a series of conferences held with Charles and Herbert Allen with Mr. Galic, and at least yourself, if you don't remember Mr. Holtzmann, is that correct? In the fall of 1966? A. Well, again I am not clear, and I am sorry, as to what you mean by "series." I testified that I met Mr. Galic twice, once in December and once in January. I don't know whether that makes it a series of conferences with him.

James W. Deer, for Plaintiff, Cross

Q. Well, start with the first one and we will see. Was there—do you agree that in the fall of 1966, November of '66, there was a meeting at which Charles and Herbert Allen and yourself and Mr. Galic met to discuss the Occidental matter? A. I don't remember Mr. Galic, my meeting Mr. Galic in my first meeting with Charles and Herbert Allen on the subject. I thought I met him only twice during (2453) this period, once in the middle of December and once in January.

The Court: Do you keep a diary with entries of meetings or conferences?

The Witness: No. What I try to keep is just a forward appointment book so I don't forget there is a board meeting set a month from now.

Mr. VanVoorhis: Speak a little louder.

Mr. Greenspoon: We can't hear you from back here.

A. I said what I keep is an appointment diary with forward appointments so that I won't forget them, such as a board of directors meeting that is scheduled a month from now.

Q. Where was the meeting with Charles and Herbert Allen and yourself held in November 1966? A. In their offices.

Q. And that was the occasion when you were discussing the Occidental matter, wasn't it? A. Yes.

Q. And did you not discuss on that occasion the prospectus and the underwriter's questionnaire? A. Well, I don't recall whether I discussed that (2454) with him on the first occasion. The first occasion is when they asked me to review the matter.

And at that time I didn't even have the file.

Q. Let me read from Page 15 of your deposition the following question:

"Q. Now what was the occasion for your calling for this questionnaire in October 1966, if you remember?

A. I believe that in the general discussion that I testified to, that I had had with either both Charles or Herbert Allen about the position of Allen & Company, vis-a-vis Occidental Petroleum and the joint venture, that is the subject of this lawsuit, that we might have discussed whether or not any particular prospectus or underwriter's questionnaire had any bearing on it insofar as it related to Allen & Company Incorporated."

Now, did you make that answer to that question? A. Yes.

Q. And is that a correct statement? A. Well, I think that is a correct statement, but as you read it, I think all it says is that at that time, which could have been the first time they asked me to review it, I said I wanted to review everything, including the Allen & Company Incorporated involvement.

Q. Well, I am not excluding any special reason (2455) you may have had, but there was a conference with your clients, Charles and Herbert Allen, to discuss the Occidental matter? A. Right.

Q. Now, did Galic attend any meeting with Herbert and Charles Allen and yourself at any time in November or December of 1966? A. Yes. The first time that I talked to Mr. Galic I believe that Herbert Allen was present throughout the discussion and that Charles Allen may have entered and been present during some part of it.

Q. How many meetings with the Allens and yourself did Galic attend? A. No more than one or two.

Q. Let me read to you from your deposition. You have reviewed this deposition recently, haven't you, Mr. Deer, in anticipation of being a witness here? A. I read it last week, yes.

Q. I read from Page 38:

"Q. How many times after that did you meet with him? (This is Galic). A. Well, maybe two.

"Q. Do you mean three altogether? (2456) A. Yes."

Is that correct? A. Yes.

Q. And these three occasions that you met with the Allens and Galic in October-November, is that right, of 1960? A. Again, I don't think you are reading the deposition accurately, Mr. Nizer. I said that I met during this period when I had it under review, November, December and January, twice with Mr. Galic, once in the middle of December and once some time in January, the third meeting, and it was not at the office of Allen and Company. As I think I testified to there, it occurred some months later in the summer of 1967.

Q. What you are telling me is that you would like to correct me if I raised a contrary inference, which I didn't intend to, that the meetings were spread over a longer period of time, is that what you mean? A. Well, the inference I wanted to correct is that you kept referring to three meetings I had with Galic and the Allens.

Q. Yes, weren't the Allens present at all three meetings with Galic? A. No.

(2457) Q. That is quite right? A. No, they were not present.

Q. How many meetings were they present at with Galic. Let me put it precisely. Excuse me, sir. Let me put the question to you precisely. How many meetings did you have with Galic where either of the Allens or both were present? A. Two.

Q. And the third was alone with Galic, is that what you mean? A. Not alone, but the Allens were not present.

Q. Who else was present? A. Well, that was a meeting in another law office and the Allens were not present.

Q. You mean other lawyers were present? A. Yes, other lawyers were present.

Q. Two of these meetings were in the office of Allen & Company? A. Of Allen & Company, that's correct.

Q. And one of them then was in the office of the counsel in this case, Mr. Greenspoon? A. Right.

Q. And the purpose of these various conferences, (2458) which I take it were held in the late fall of '66, is that right? A. And January of '67.

Q. And January of '67—was it to discuss a possible claim and suit against Occidental, is that right? A. Well, not necessarily a suit against Occidental. It was so that I could properly advise Allen & Company what position it had under the joint venture.

Q. But wasn't the purpose of th[illegible]ing to discuss whether a suit could be mounted [illegible] Occidental on what you have called a joint [illegible]greement? A. Well, I'd rather phrase it this [illegible]e purpose was to advise them what their rights were so they could make a claim. That wouldn't necessarily involve a lawsuit.

Q. Let me read to you from Page 57 of your deposition, Line 3:

"Q. Is that correct that that conversation with Galic and the memorandum were part of preparation for bringing of a lawsuit in this case? A. Absolutely."

Is that correct? Did you make that answer first? Of course you did, didn't you? (2459) A. Yes, yes, I made that answer. That is the way it turned out. The original purpose was to make the claim, that if the claim was not on order, then a lawsuit might have resulted and in fact did.

Q. Would it be fair to say, Mr. Deer, that your entire review of the matter beginning in October 1966 was for the purpose of the lawsuit which has now been brought? A. I don't know that the original purpose contemplated a lawsuit. The original purpose was to determine what Allen & Company's position was under the venture, whether they were entitled to an accounting, and I think it could be assumed that if they were and they didn't get it, that a lawsuit would follow. But there was certainly

no intention at that point as far as I was concerned or I had not given any advice that a lawsuit should be filed.

Q. Wouldn't the purpose of reviewing their position be to bring a lawsuit? A. The purpose of reviewing their position was to determine what their rights were, that might or might not result in a lawsuit.

The Court: Mr. Deer, hadn't you determined in July 1965 what the position of Allen & Company was in the joint venture?

(2460) The Witness: Well, I had determined in July of '65 that the purported termination was not effective and therefore the joint venture was, insofar as it was purported to be terminated by that action, it continued in existence, but—

The Court: That is what I put to you that you had come to a judgment in July 1965 that there was a vital, existing joint venture.

The Witness: That is correct. But the joint venture agreement provided that Allen & Company was to have certain rights, namely 25 per cent in concessions which were turned up by Allen & Company or its agent, Mr. Galic, and part of the determination in the fall of '66, and early January '67, was for me to investigate with Mr. Galic to determine what he had done in that connection.

The Court: In other words, whether or not Mr. Galic had turned up—

The Witness: That is correct.

The Court: In other words, there was not, according to your opinion, he could not be entitled to participate unless it was the result of Galic having turned up these things?

The Witness: That is correct, that is my interpretation.

(2461) Q. Well, I read to you from Page 91 of your deposition:

"Q. But between the time of 1965, the date of Defendant's Exhibit 13, which is now P124, your Honor just referred to it, and the late 1966 or '67 discussion which I take it was in connection with the lawsuit? A. Well, reviewing their position, yes.

"Q. For the purpose of the lawsuit that was brought, is that right? A. Yes."

Did you make those answers to those questions? A. A. Yes, I made those answers. Could I qualify it this way? It turned out that everything that was done did form the basis of a lawsuit, but you asked whether or not it had been the purpose at the time we started. That is the only thing I find wrong.

Q. Do you know of any reason—

The Court: Well now, I am not clear on that. Please explain this to me.

The Witness: Well, his earlier questions seemed to ask or imply that when I started the review in the fall of '66, it was for the purpose of bringing a lawsuit. All I am trying to say that it was only for the purpose (2462) of determining what Allen & Company's position was or whether they should ask for an accounting through the joint venture, and of course, I think it could be presumed that if our advice was that they were entitled to an accounting and they couldn't get it, that a lawsuit might follow, so it turned out that what was done did eventuate in a lawsuit, but that might not have been the original purpose of the study. The original purpose was only to determine what their rights were.

The Court: Well, I am only asking this question to make clear my understanding that you had stated the purpose was to determine, that is the 1966 meeting, what their rights were.

The Witness: Right.

The Court: You had previously determined in July 1965 that in your opinion there was an existing—

The Witness: Joint venture.

The Court: —joint venture, and the purpose, as I understand you now, of those meetings, was to see whether or not Galic in fact had turned up any concessions on the basis of which you could bring a lawsuit?

The Witness: Or on the basis of which we could ask for an accounting.

(2463) The Court: Well, ask for an accounting or bring a lawsuit or file a claim?

The Witness: Yes.

The Court: To determine whether or not at that point in your opinion Allen & Company on the basis of Galic's having turned up concessions, was in a position to assert claim against the defendant?

The Witness: That is correct.

(2464) By Mr. Nizer:

Q. Well, you knew, of course, that the concessions had been awarded to Occidental in February, 1966? A. That is correct.

Q. And you waited until October or November, 1966, to determine if Galic had turned it up? A. I waited until I was asked to make the investigation.

Q. Isn't it a fact, Mr. Deer—do you know of any reason for the conference except Occidental's discovery of oil?

> Mr. Greenspoon: Which conference? I object to that unless a date is fixed because we are talking about three conferences extending over an eight months period, from October to the summer.
>
> The Court: Clarify your question as to time, please.

Q. Do you know of any reason for the October conference or November conference except Occidental's discovery of oil? A. Well—

Q. Can you answer that directly, and then I will permit you to say anything you wish? I really won't constrain you, but give me an answer first. (2465) A. Your question, really, Mr. Nizer, has an assumption in it. It assumes that was one of the reasons, and you asked me whether I know of any reason other than that.

Q. That is right. A. I don't know the reason why they asked me, but they did ask me.

Q. Well, you were asked that precise question at page 106 of your deposition and the question was:

"Q. Do you know of any reason that was assigned for going into a series of conferences at the end of 1966 about this matter except this information which you now know as a fact," referring to the oil discovery.

And the answer was:

"A. Do I know of any reason other than the discovery of oil why we—

"Q. Yes. A. No, I don't know of any other reason."

That was your original answer?

Mr. VanVoorhis: This is not the way the transcript reads that I have before me.

Mr. Nizer: There were changes made, with initials. Please let me come to it in due time. I am not going to omit it.

(2467) A. Yes, I made those changes. It—

Q. Do you have any memorandum that refreshed your recollection upon which you changed your original answer? A. Well, no. After I read the transcript it was clear that your question has an assumption in it which I don't accept.

Q. And didn't you understand that question with that assumption, if you call it that, at the time that you made your answer? A. No, apparently I did not understand it.

Q. Didn't you understand it when you even repeated the question, in your form, when I asked, "Do you know of any reason that was assigned for going to a series of conferences," etc.? And you replied, "Do I know of any reason other than the discovery of oil?" And then you replied, "No, I don't know of any other reason"? A. Yes, but I don't accept the assumption—

Q. Do you mind if I finish my question?

Mr. VanVoorhis: Do you mind if he finishes his answer?

Q. When you answered, "No, I don't know of any other reason," did you understand whatever assumption you claim now was in that question? A. No, I did not.

(2468) Q. When did it come to your attention that you wanted to strike out the words, "other than the discovery of oil" from your own statement of the question, and the word "other" from your answer, "No, I don't know of any other reason"? When did that come to your attention? A. When I read the transcript.

Q. When did you first read it? A. I don't recall now, but I think there was a considerable period of time between the giving of the deposition and receiving the transcript.

Q. You read it, certainly, before you signed it and initialed that change, didn't you? A. Yes.

Q. How long before you made that change had you read it, do you recall, Mr. Deer? A. No. I think I made the change almost simultaneously with reading it.

Q. Did you discuss the change that you made with counsel in this case, any counsel? A. I think I pointed it out to them after I made it.

Q. After you made it? A. Yes.

Q. You are sure that you called it to their attention (2469) that you wanted to make this change? A. I don't have too clear a recollection on it, but that is my best recollection.

James W. Deer, for Plaintiff, Cross

Q. At these conferences, let's say the first two, since you separate the other one at a later period—let's take the formal conferences, and that would be in late 1966, probably in October, and November, 1966, is that right, the first two? A. Yes. Are you referring to conferences with Mr. Galic?

Q. And the Allens, right. A. I don't believe I saw Mr. Galic until the middle of December.

Q. Well, for this purpose let me then limit myself to your conversation with the Allens. You it was who called for the underwriters' questionnaire which was submitted in connection with the Occidental $62,000,000 debenture issue. That was not just in a file, you called for it at that conference? A. As distinguished from calling for the file? I think I called for the file.

Q. No, you called for the questionnaire, the underwriters' questionnaire, didn't you? A. My recollection is I called for the file. The (2470) questionnaire was in it. Mr. Nizer, I don't believe I ever received and called for the questionnaire as a specific document, without the file.

Q. Let me read to you from page 33 of your deposition:

"Q. At the time, Mr. Deer, that you called for this questionnaire to look at it, the underwriters' questionnaire," which is Defendant's Exhibit 8 now, "and the prospectus," which is Defendant's Exhibit 35 in the deposition, now Exhibit 11, "had Occidental already discovered oil in Libya? A. In October of '66, I don't know. But I think it was on or about that time, but I don't recall," and you spoke about when the announcement came out and what you knew about it. Did it slip your attention that in the context of the long series of questions I concluded by saying, "At the time, Mr. Deer, that you called for this questionnaire to look at it"—

Mr. VanVoorhis: Those were counsel's words.

Mr. Nizer: Those were my questions, I just stated that.

Q. Did you mean to say that in answer to that question you didn't observe what I was asking at that time, that you had called for it? You overlooked that, you mean? (2471) A. Well, it still seems to me that it is quibbling about words.

Q. Is it? A. If I called for the Allen & Company file, it is going to have the prospectus and have the questionnaire in it.

Q. My dear Mr. Deer, was there any reason to call in connection with the rights of Occidental and Allen & Company under the alleged joint venture—was there any more reason to call for the questionnaire unless you deemed that it was inconsistent with the claim that you were considering making? A. Well, when you ask for a reason why I called for it, I called for the file and anything that relates to it because I wanted to consider everything.

By the Court:

Q. I think the thrust of Mr. Nizer's question is, if as you have already testified you didn't consider the joint venture a material relationship, what was the significance of the prospectus or the questionnaire and why did you ask for that file? A. Well, I asked for that file because I just thought it might have some bearing on this whole question.

Q. In what respect? (2472) A. I didn't know at the time I called for it. I just wanted to see everything. It has a complete description of the company's business. I was trying to find out the extent to which they attached importance, if any, to the Libyan oil concessions, what they said about them.

Q. What did that have to do with the basic situation as to whether or not Allen & Company had a claim based

on the alleged joint venture relationship, that is, between Allen & Company and Occidental? You have already testified that you did not regard that as a material relationship. A. That's correct. I simply wanted to see everything, your Honor. As it turned out, it had no bearing.

Q. While we are on that subject, let me ask you one other question in light of the testimony you gave before the recess: without regard to the SEC statute or any rule or regulation of the SEC as to any prospective purchaser of securities, are you saying, and is it your opinion, that Allen & Company's claimed joint venture relationship with Occidental was not a material relationship? A. It was not a material relationship at that time.

Q. At what time? A. At the time the questionnaire was filed and (2473) at the time the prospectus was issued which was June 17, 1966.

Q. But it could become a material relationship? A. It could become material.

Q. Under what circumstances? A. It could become material if the joint venture itself in the concessions became very valuable in relation to the other assets of Occidental and became an important part of its earning power.

Q. The very fact of this potential relationship becoming valuable in and of itself was not a material relationship? A. I don't think so.

The Court: Well, again I am cautioning counsel, as I did earlier in the trial, that the fact that I am asking questions doesn't permit the drawing of any inferences as to the court's attitude or disposition, but I am seeking information from this witness so that I might understand his testimony in full.

Mr. VanVoorhis: In that connection, your Honor, I would suggest that your Honor examine the other language of the underwriters' questionnaire im-

mediately following the material relationship with a view to the rules, if I pronounce the Latin correctly *ejusdem generis* and *noscitur a* (2474) *socis*.

The Court: I think in some respect there is another element to this item and that is as to whether or not this is considered an admission against interest, entirely apart from all the discussion of SEC rules and regulations and public investors' attitudes and the rest. Don't you agree with that?

Mr. VanVoorhis: Yes.

The Court: I have just one other question, not on this subject, but on another subject:

Q. Coming back to the letter of July 16, 1965— A. The purported termination.

Q. I think you said you had a conference within a day or two after this was received? A. That is correct.

Q. And you examined this letter and examined the file? A. Right.

Q. And you saw the letter of December 17, 1964, and I take it you also had a conference with your clients of their version of whatever the relationship was, and after examining the file, whatever your discussions were with the defendant, you decided that no reply was required? A. That's correct.

Q. The Occidental Corporation was taking the position (2475) that the agreement no longer was in existence? A. That's right.

Q. Didn't you think it incumbent to expressly state the position of your client at that time challenging the position of Occidental, putting something in writing to say that "We don't agree, period," or whatever your judgment was, setting forth your own position that the agreement, from your point of view and from your client's point of view, was still in existence and Occidental could not terminate that? A. I think I also testified this morning that Mr. Charles Allen said that he was going to speak to Dr. Hammer very shortly.

Q. I am aware of that, but I am asking you as an attorney were you aware of the significance of the position the defendant was taking? Didn't you consider it desirable to state in writing the position of your client negativing the contention of the defendant? A. Not under those circumstances, where I knew that he intended to have the conference and where the parties themselves had had a number of ventures between them, some very substantial, which were also oral.

* * *

By Mr. Nizer:

(2476) Q. You have distinguished in the last few moments of my questioning between calling for a file and my statement to you, in the form of some questions, that you called not for the file but for the questionnaire in the 62 million debenture issue? You have made that distinction, haven't you? A. Well, the distinction has been made and I guess I made it.

Q. Let me read from another section of your deposition and ask you if that doesn't refresh your mind that you accepted the fact that you specifically called for the questionnaire, not for the file which had a questionnaire.

Listen to this question on page 14:

"Q. By 'this' you mean Defendant's Exhibit 18?"

Which is now D8.

"A. Yes.

"Q. It was you, then, who called for the questionnaire so that you wanted to see it at about that time? A. I think so, yes."

Did you make that answer to that question? A. Yes, I did.

Q. And doesn't that indicate to you that during these conferences that you asked to see the questionnaire and

the prospectus, not merely a file? Doesn't that indicate (2477) that to you? A. Well, I don't.

Q. That doesn't— A. I think in the context of that deposition you had handed me the questionnaire and asked whether I had seen it before, and I said yes—

Q. No. Now, Mr. Deer, in the first place— A. It wasn't just a questionnaire, it was a prospectus.

Q. I didn't hand it to you at that time, but even if I did, that would not be an answer to my question, would it?

Mr. VanVoorhis: I object to arguing with the witness.

Q. My question is, when I asked you this question, direct question:

"Q. It was you, then, who called for the questionnaire so that you wanted to see it at about that time? A. I think so, yes"—

Doesn't that indicate to you, since you admit you made that answer, that it was you—doesn't it refresh your recollection that it was you in the course of these conferences, the first two, I take it, that called to see the questionnaire, not just the file? Doesn't it indicate (2478) that to you? A. Well, I was the person who called for whatever was called for. That is what it indicates.

Q. Now, will you answer my question? That is interesting. Will you answer my question: Doesn't it indicate to you that it was you who called for the questionnaire, not just the file? A. Well, I think I answered it.

Q. Will you answer it now for me directly? Wasn't it you who called for the questionnaire? Doesn't this answer refresh your mind to that effect?

Mr. VanVoorhis: Your Honor, we have certainly been over this sufficiently. It is perfectly plain what the witness did and it seems to me that it

is improper for counsel to keep repeating these semantics in order to try to accomplissh some purpose.

I object to this.

The Court: You may ask the question once more and we will move on to something else.

Q. Doesn't this indicate to you and refresh your mind, since you made that answer, that it was you who called for the questionnaire at this conference, not just the file, which you also may have called for? A. Well, I called for the questionnaire, but that (2479) wasn't the only thing I called for. That is the best I can answer it. I called for the prospectus—

Q. And you called for the prospectus. And you discussed the underwriters' questionnaire with Mr. Holtzmann, didn't you, at that time? A. I remember discussing some matters of this whole subject with him. It is hard for me to fix a time.

Q. Is the answer to my question yes? A. Yes.

Q. And you also discussed the questionnaire with Charles Allen during that conference, didn't you?

Mr. Greenspoon: What conference?

Mr. Nizer: October, November.

Q. The two that you have been referring to. I have limited myself to those at this time.

Didn't you? A. I discussed all aspects of it with him.

Q. But answer my question, did you discuss the questionnaire with Charles Allen? A. I think so.

Q. Did you also discuss the questionnaire with Herbert Allen at these conferences? A. I think so.

Q. Wasn't the reason that you discussed the (2480) questionnaire and indeed called for it that you felt it had a bearing on whether you could sue in this very case? A. I thought it might have a bearing. That is why I called for it.

James W. Deer, for Plaintiff, Cross

Q. Did you feel that the prospectus could also have a bearing on whether you could sue in this case? A. It could have had, yes.

Q. When you used the word "bearing," do you mean whether the representation made to the SEC and through the underwriters' questionnaire to the underwriters was an accurate representation of the Allen Company interest in the alleged joint venture with Occidental? Isn't that the "bearing" you are referring to? A. Well, it could be one aspect of it, yes.

Q. At page 15 of this deposition of yours, bottom of the page:

"Q. When you said had any bearing, do you mean whether the representation made to the SEC," and this is Defendant's Exhibit 18, "was an accurate representation in connection with the Allen Company interests with what you call the joint venture with Occidental? Is that what you mean? A. I think that is accurate, yes."

Did you make that answer? A. Yes.

(2481) Q. And you stand by it, don't you? A. Yes.

Q. Now, you have reviewed the language of paragraph 3A of the questionnaire, which states in part, "Neither we nor any of our directors, officers or partners have a material relationship with the company." Now, the company means Occidental Corporation, doesn't it? A. Yes, it does.

Q. And, of course, the reference to directors, officers or partners would include Herbert Allen and Charles Allen and other partners of Allen & Company, the partnership, who were also directors and officers of the corporation, Allen & Company, Inc., is that right? A. That's correct.

Q. You say it was accurate to state in the questionnaire that neither Charles nor Herbert Allen nor Allen & Company had any material relationship with Occidental in May, 1966? A. Yes, I said so.

Q. And you still believe, you say, in May, 1966—withdrawn.

And yet you now assert that in May, 1966, Allen & Company had a 25 per cent interest, a claimed 25 per cent interest in connection with Occidental's (2482) Libyan oil concessions? At the same time you say that, don't you? A. Right.

Q. Do you believe that the other two underwriters involved in this issue were entitled to know of Allen's claimed interest in said concessions in May, 1966? A. No.

Q. Pardon? A. No, I don't believe they were.

Q. Do you believe that the SEC was entitled to know of Allen's claimed interest in those concessions in view of the fact that the prospectus filed with the SEC made reference to those concessions? A. No. Under the rules of the SEC, this was not required, for the reasons I gave earlier.

Q. Did you believe that the customers of Allen & Company, Incorporated, who purchased Occidental debentures on the basis of the prospectus were entitled to know of the claimed interest of Allen & Company in Occidental's Libyan oil concessions? A. No.

Q. Based upon your years of experience in SEC work, would it be fair to say that a material fact or relationship is anything which may affect the value of the (2483) security then being offered to the public? A. Yes, I think that is correct.

Q. And are you familiar with rule 405 of the General Rules and Regulations of the 1933 Securities Act, 17 Code of Federal Regulations, 230, 405, which defines the word "material"? A. That's right.

Q. Would you accept that definition to which you referred, and I read it precisely, of the SEC, in rule 405, that a material fact is any matter "as to which an average, prudent investor ought reasonably to be informed before purchasing the security"? Do you agree with that? A. I accept that definition.

James W. Deer, for Plaintiff, Cross

Q. You are familiar, of course, with a case that you cited on your direct examination, the Texas Sulfur case? A. That's correct.

Q. You quoted that case—would you repeat it—something about that there must be something extraordinary before there is revelation? Would you please tell me what you said about that? A. I think that in the course of the decision the language appears that for a fact to be material it must be extraordinary in nature and have a material effect upon the market value of the security.

(2484) Q. Does the Texas case stand for the proposition generally accepted, and certainly by SEC counsel, that the test of materiality is whether a reasonable man would attach importance to the undisclosed fact in determining whether or not he should buy the security? A. I think that is a fair statement.

Q. And there is nothing about "extraordinary" in that definition, is there? A. No, the word "extraordinary" is not used, but it says that which he might consider important and he might only consider things important which are extraordinary and are reasonably certain to have a material influence on the market price of the security.

Q. You equate, first of all, the word "important" with "extraordinary importance"? A. I don't necessarily equate them, but I think that the case—the statement I referred to did use the word "extraordinary" in it.

Q. What case? A. The Texas Sulfur case.

Q. In that case or in a case that is cited there? A. No, I think it was in the Texas Gulf Sulfur case.

Q. Let me read an exact quote from the Texas Sulfur case and see if you don't accept it:

(2485) "The basic test of materiality is whether * * * a reasonable man would attach importance * * * in determining his choice of action the transactions in question."

Do you accept that? A. Right.

Q. There is nothing in that that indicates the test must be something of extraordinary importance, does it? A. Not what you read. They use the word "importance."

Q. Are you also familiar with the recent decision in the Second Circuit, handed down as recently as July 3, 1973, in the Sonesta International Hotel Corporation v. Wellington Associates? The Sonesta case, aren't you familiar with that? A. Yes. I think that involved a tender.

Q. Yes, it did. That is quite right. A. Not a prospectus, a tender.

Q. No, but it has a definition, it confirms a definition—I will read a quote from it and ask you if you agree with this—

> Mr. VanVoorhis: I assume that counsel has a right to ask the question, but I would call attention to the fact that there are quite a few years lapsed between 1966 and 1973.
>
> (2486) Mr. Nizer: I am demonstrating, I think, that they have confirmed the principle which always existed. These cases are not novel, I will contend, but—
>
> Mr. VanVoorhis: Sometimes courts make the law and sometimes they discover it.

Q. Let me read a quote from the Sonesta case and ask you if you agree with it:

"To be a material statement * * * need not necessarily relate to a past or existing condition or event. It may refer to a prospective event even though the event may not occur provided there appears to be a reasonable likelihood of its future occurrence * * * where the event if it should occur could influence the stockholder's decision * * * the chance that it might well occur is a factor that should be disclosed to the investor for consideration in making his or her decision."

Do you agree with that formulation of the principle? A. Yes.

(2487) Q. You also know, do you not, that this principle had previously been asserted by the Second Circuit in another recent case, the *Chris-Craft* case, 480 Fed. 2d 341, Page 368, holding that the probability of the event which had not yet occurred may nevertheless be material requiring disclosure.

You are familiar with that case, aren't you? A. Yes, that is also a tender case.

Q. Yes? Would that make any difference as to the definition of materiality in your mind? It wouldn't, would it? A. Not necessarily, no.

Q. All right. Now, would you accept the following formulation, and I quote from tthe Court of Appeals in the *Chris-Craft* case.

"Whether facts are material * * * when the facts relate to a particular event * * * will depend at any given time upon the balancing of both the indicated probability that the event will occur and the anticipated magnitude of the event in light of the totality of the company activity."

Do you agree with that, sir? A. I would accept that, yes.

(2488) Q. Looking back in hindsight you are familiar, are you not, that Occidental receives 40 per cent of its profits from its Libyan oil find? A. I don't know that, but I will accept your statement.

Q. In any event, at all times in January 31, 1967, and thereafter when you read of this big gusher, you knew that this was a matter of potential millions if that report was correct, and it worked out, right? A. I think so, yes.

Mr. VanVoorhis: I think we ought to have it clear what the time is.

Mr. Nizer: I did state the time, I said January 31, '67 and thereafter.

Mr. VanVoorhis: All right.

Q. You heard your client, Mr. Charles Allen and Herbert Allen testify that they knew that the exploration of oil could involve hundreds of millions of dollars, you know that, don't you? You were in court when that testimony was given, weren't you, is my first question?

Mr. Greenspoon: No such testimony was given, and I object to that.

Mr. Nizer: Yes, it is.

Mr. Greenspoon: Exploration of oil, no.

(2489) Mr. VanVoorhis: His question is really not proper cross, simply asking the witness whether he heard something, and doesn't ask him any question.

Mr. Nizer: Let me start over again, perhaps that is right, Judge VanVoorhis.

Q. You were in court when Charles and Herbert Allen testified, were you not? A. Yes, I was.

Q. And did you hear either or both of them testify that the exploration of oil involved a cost of many millions of dollars? A. I don't recall.

Q. Didn't you even hear the phrase "hundreds of millions"?

Mr. VanVoorhis: May the Court please, it is irrelevant whether they testified—

The Court: I don't know what the question is that is going to be put to him.

Mr. VanVoorhis: They testified to whatever they did testify and whether this witness was in court or heard it is not—

The Court: I don't know what the next question is. He is just asking him if he heard the testimony.

(2490) Q. It is the foundation for my next question, Mr. Deer, which I think as a very able lawyer—

Mr. VanVoorhis: It is not an accurate statement.

Mr. Nizer: It is accurate.

Mr. VanVoorhis: I think we ought to proceed to the next question.

Mr. Nizer: Don't challenge the accuracy of it because I will represent that not only did they say many millions but said hundreds of millions, and I will show you the citation a little later.

As a matter of fact your Honor put many quesitons to Herbert Allen about this.

The Court: I was going to say that I included in a question I put to him a reference to the explorations, of the possibility of oil explorations running into the hundreds of millions of dollars. It came up in connection with the suggested participation of Associated Gas. I don't think there is any real question about that.

Mr. Nizer: That is correct.

The Court: All right, put your question.

Q. So you knew from your general representation of the Allens and their various enterprises that the (2491) exploration costs alone of oil or the finding of oil involved very substantial sums of money? A. It could, it certainly could.

Q. And also that if oil were found, that would involve very large sums of money both as profits, if it were found, it could? A. Yes.

Q. And also that the concessions which had already been granted to Occidental were hailed as valuable concessions. You knew that at that time, or didn't you? A. No.

Q. You didn't know that. Didn't you consider, in view of the cases which you have just heard cited and which you agreed with, that there was a reasonable likelihood of very large profits from this venture if oil was struck in Libya?

Mr. VanVoorhis: He couldn't very well have considered them because they hadn't been decided

at the time that we are talking about. I think you better rephrase that question.

Mr. Nizer: All right, I will take your directions as if you were the Judge.

The Court: I think we ought to go to lunch.

(Luncheon recess.)

(2492) Afternoon session.

2 P.M.

The Court: Mr. Nizer, you may continue.

JAMES W. DEER, resumed.

Cross Examination Continued by Mr. Nizer:

Q. In your testimony on direct examination you stated that under the SEC statutes and regulations the word "material" is defined by "relationship," is it not? That was your testimony? A. Yes, it was.

Q. And you then stated that what you call the joint venture agreement between Occidental and Allen & Company did not rise to a relationship, is that right? A. That's right.

Q. You don't consider the alleged joint venture agreement which is in evidence here as P71 as creating a relationship between Occidental and Allen & Company, right? A. That's right.

Q. You also made a distinction between, as I heard you, underwriting arrangements but that "relationship" did not refer to contracts or transactions? Is that what (2493) you said? A. Yes. I think what I said, Mr. Nizer, is that there is an item on the basic registration form—I think it is Item 2—which calls for a disclosure

of the entire underwriting arrangements, the price, the concession, things of that nature, whether it is a best efforts or a firm underwriting, and then there is a subparagraph under there which says, "Disclose any material relationship between the issuer and any underwriter," and then I think what I also said was that there are other places in the registration statement and prospectus where they call for disclosure of material contracts if they are between the issuer and anybody, including the underwriter or any other party, if they are material, and there are other items on the registration form which they call for disclosure of material transactions between an issuer and its officers and directors and affiliated persons, including underwriters, if they happen to be affiliated, and while it is true that perhaps there might be disclosure of certain contractual relationships or transactions under those other items, I don't believe that every contract or contractual relationship is the type of relationship they are referring to in the Item 2 which refers to the underwriting arrangements.

Q. Well, Mr. Deer, you don't find and you can't cite (2494) any legal definition or authority or case for that kind of analysis; this is your judgment as a lawyer, is that right? A. That's correct. I think there is—

Q. And is it—

Mr. VanVoorhis: Please let him finish his answer.

Q. I thought you said "That's right"? A. Yes. I was going to add that in these other instances that I mentioned, where they call for a material contract, at one place in the registration, or for disclosure of material transactions, that is one thing, but a material relationship might not even be based upon a contract or a transaction between the issuer and the underwriting. It might be simply a controlling influence based upon the amount of stock which an underwriter owns and there

would be no way for the issuer to know it if it didn't come out in a questionnaire. That is the reason the relationship is asked for that way. Contracts, if they are to be material, are disclosed in another way.

Q. That explanation means that you are broadening the area in which disclosure must be made, isn't that so? A. Broadening it from what?

Q. You are not only limiting it to contracts, you (2495) say there might be just a relationship that isn't based on a contract that must be disclosed. A. Oh, yes, very definitely.

Q. So what you are telling his Honor is not that you would limit the duty to disclose in the questionnaire to a relationship that is only expressed in a contract, you go further, you say even if it isn't in the contract, if it has an influence of some kind on the transaction it should also be disclosed? Isn't that your interpretation of it? A. Oh, yes, indeed. In other words, if the underwriter had a 15, 20 per cent interest in the company, if he had some kind of a voting trust arrangement, that is the type of relationship which I think is called for under that item and that might not be based upon a contract. You see, if it is based on a contract, the issuer might very well know it. The issuer knows the contract it has but it might not know a relationship unless the underwriter disclosed it.

Q. But if it was a 15 or 20 per cent interest, as you just indicated, but it also was expressed in what is claimed to be a contract, surely that would not exclude it from the duty to disclose, would it? A. Oh, no, not at all.

(2496) Q. Going back to the authorities that I was reading to you and quickly summarizing them very elliptically, not to repeat them all, in the light of the definitions which I have read to you as to what is a material relationship, not only in the definition under the rule which you agree with, not only in the definition in the Court of Appeals cases which I read to you and which you agreed

with—in the light of these authorities, do you still say—frankly, now—do you still say that a 25 per cent interest in the Libyan oil concessions that Allen & Company claimed did not represent a material relationship in May, 1966?

Mr. VanVoorhis: I object to the form of the question.

The Court: What part do you object to?

Mr. VanVoorhis: The argumentative nature of it, the construction of decisions which is placed in the question itself.

The Court: I will allow him to answer the question.

Q. Do you want it read back to you? A. No, it is not necessary to read it back, but in the beginning of your question you said that these cases referred to material relationships. I don't think (2497) they necessarily referred to material relationships as such. It may have been material facts. We have been making a distinction here as to what a relationship is.

Q. How do you make that distinction— A. And you pointed out yourself there are no cases on it.

Q. No, I don't. I don't accept that. I think the definition—

By the Court:

Q. Do you say the relationship was not a material fact? A. Yes, I do.

Q. That it was not? A. It was not a material fact, and the reasons for it are that under all the cases he cited about an important fact or a reasonable probability, and so on, those are only abstract principles which just do not apply here.

In the light of Occidental Petroleum, this particular concession was a very, very small item. It was not claimed to be anything in particular. The SEC wouldn't

let Occidental claim it as anything in particular. They had no demonstrated reserves, they didn't even have a geological or a geophysical survey, that we knew about.

It is perfectly true that they had to disclose what (2498) they intended to use the money for, but that didn't mean that at that time it was a material asset either to Occidental or anything which an average, prudent investor should have given any value to.

Q. I think you were discussing it in reference to Occidental just now. Wasn't it a material fact as far as Allen & Company was concerned, that is, its 25 per cent alleged participation? A. I think as far as Allen & Company is concerned, Allen & Company being a broker-dealer which is required to keep its books in a certain manner under the rules of the Securities and Exchange Commission, being required to maintain capital at certain levels, having very strict rules and regulations, know what can be included in that capital, and they couldn't give one dime's worth of value to that interest in that concession.

Q. Is that the test to whether or not they could ascribe any value to it as of a given time? A. Well, I think it has to be certainly one of the tests that has to be considered.

Q. I am trying to follow your answer on this. The testimony was, and I think you indicated too, that this could turn out to be a hole in the ground and could be a sort of a lottery, but if Allen & Company was committed to (2499) the payment of 25 per cent of the costs and expenses, that could run into a very substantial figure, could it not? A. Well, I believe that it could.

Q. Wouldn't that be material to anybody that had an interest in Allen & Company? A. It could well be, if someone did have an interest in Allen & Company. I think here it was being considered from the standpoint of Occidental.

Q. But wasn't there a very substantial contingent liability for the payment of costs and expenses if explorations did absorb many millions of dollars? A. Well, there could be and, in fact, the joint venture agreement provided that Allen & Company was liable for 25 per cent of the costs as well as entitled to 25 per cent of the profits, but at that point it was all in the future and I don't know that there is any proper basis for assuming that it would run into staggering amounts of money. The manager, which happened to be Occidental, of the venture, could determine how much they were going to drill, but if they were going to drill in any very substantial amounts—I know the phrase hundreds of millions of dollars was used here, but I don't think it was used as being the amount that was going to be put into the ground, unless there was some chance of success, but if that had been the (2500) intention of Occidental, then I think they should have written that prospectus much more differently so that the investor would know there was that possibility, that all that money would be spent on this concession as to which there was no geological or geophysical surveys.

So I just don't think it was reasonable for Allen & Company to have to assume they would have to put a potential liability like that on their books until they were advised there had been commitments for that drilling.

By Mr. Nizer:

Q. Well, you have agreed with the expression of the Court of Appeals that to be material a statement doesn't have to relate only to the past or existing condition but may refer to a prospective event, even though the event may not occur, provided there appears to be a reasonable likelihood of its future occurrence.

Now, even if it were a lottery, isn't there a reasonable likelihood of its future occurrence, even if I take your

very extreme case, not concessions awarded after competition with all the major oil companies in the world—you decide subjectively that there is no reasonable probability? Is that it? A. Well, you asked assuming a lottery, but there is no reasonable probability on a lottery, of course.

(2501) Q. But is there on this, an oil concession— A. I don't think so. When the Court of Appeals used the phrase "reasonable probability," that came up in connection with a tender situation, where one company was tendering for the stock of another and the question was whether they should have disclosed certain things they intended to do or might possibly do, and it was held to be material even though it did not occur if they thought they might do it.

To put this in perspective, suppose that Occidental had nothing, had no other asset except this concession, this was the principal asset they had and they were trying to register this in front of the SEC, they would have had a very, very difficult time getting the Commission to give any value, permitting them to say anything about this, certainly nothing about a reasonable likelihood—

Q. May I interrupt your lecture for a moment? The fact is, in this very matter, that so far as Occidental is concerned its prospectus considered the Libyan concession a fact which it wished to have considered by the potential buyer, didn't it? A. Yes. In fact, it was required to.

Q. And it set forth as a possible persuasion for the purchaser a detailed analysis of the concessions awarded by the Libyan Government, their proven location, their income (2502) potential, and many other facts, didn't it, in the prospectus of Occidental? A. I don't recall anything about income potential.

Q. Well, let me show you. While we are reading this, let me continue and I will come back—

Mr. VanVoorhis: What are we reading?

Mr. Nizer: I am not reading anything yet.

Q. Isn't it a fact that more than 50 per cent of a chapter in the prospectus, on pages 23 and 24—page 23, running over into 24—that more than 50 per cent of that chapter was devoted to the Libyan oil concessions which Occidental had won in competition under sealed bids? A. Yes, Mr. Nizer, but all—

Q. Just answer my questions for a moment. A. I think you are correct in your statement.

Q. And as an SEC lawyer you are familiar with the rule that even if a fact which is not material is set forth in the prospectus, the underwriter must see to it that such fact is complete? You know that rule, you accept that, don't you? A. Yes.

Q. In other words, even where the information which need not be disclosed is volunteered—

Mr. VanVoorhis: Are we talking now about—

(2503) Mr. Nizer: May I finish my question, please?

Mr. VanVoorhis: I thought you had.

Q. —it must be set forth completely and truthfully? That is a rule established by all the authorities, isn't it?

Mr. VanVoorhis: Are we talking now about the underwriters' questionnaire?

Mr. Nizer: No, I am talking about the prospectus, and I have so indicated.

Q. That is correct, isn't it, or do you want it repeated? A. It is not necessary to repeat it. I would answer it this way: Certainly there are heavy civil and criminal penalties if material facts are misstated or omitted.

Q. There are situations, are there not, where an underwriter may be required by the SEC to disclose immaterial relationships? Isn't that so? A. Of a specific nature, yes.

(2504) Q. All right, and the answer is yes, there are situations where an underwriter may be required by the SEC to disclose immaterial relationships? Correct? A. In specific cases, I think that may be true.

Q. And such information must then be given by the underwriter completely even though it is immaterial, isn't that correct? A. Well, I'd have to answer that this way, one—

Q. Can you answer it yes or no, first, really? I don't mind the extensive answers, but I'd like a direct answer first.

Mr. VanVoorhis: If you can't answer it yes or no, then you can say so.

Mr. Nizer: Yes, of course. He knows that.

Q. Can you answer that question? A. I will say no, and if I may I will give you an answer to clarify it.

Q. No, don't give me examples. Let's proceed with a little more directness because I get lost in extensive answers. I will permit you to answer after I get—

Mr. VanVoorhis: He gets lost in the lengthy questions.

Q. You say that information which is required by (2505) the SEC in specific cases, as you say, which is not material, must nevertheless, if it is set forth, be complete and not partly complete. You say that is incorrect or is it correct? A. It is incorrect. These heavy penalties would not apply to a misstatement of an impact.

Q. Now, forget penalties and sanctions. I am asking you about the authorities which hold, as I believe, and I ask you this question, do they not hold that where the SEC calls for certain information that is not material that it becomes the duty of the underwriter and the issuer to see that this immaterial information is absolutely complete? A. Well, hopefully it should be accurate and complete.

Q. That is not my question. Isn't that—can't you answer that directly? A. You asked if there is a duty.

Q. Yes, yes, precisely. Isn't there a duty if you set forth any material required by the SEC even though it be an impact, that that information must be complete and not partial? A. Well, I don't think there is a legal duty in the sense that you would be subjected to penalties if you had an immaterial statement.

(2506) Q. Mr. Deer, can I take out penalties again? You were taking me— A. I don't know what the word "duty" means. You asked me whether there is a duty.

Q. A duty irrespective—

Mr. VanVoorhis: A penalty for every breach of duty?

Mr. Nizer: I don't know how many witnesses I have now.

Q. My question is, irrespective of the sanctions that may or may not be applied, do you understand it is not a duty to give complete information even though that information required by the SEC is immaterial fact? A. I don't understand it is a duty, no.

Q. Pardon? A. I don't understand that it is a duty to give—

Q. In other words, Mr. Deer, I will accept your answer, if that is it. You tell me that if the SEC in those special circumstances requires you to set forth certain fact and if you set it forth only partially, omitting part of the fact, that that is all right, is it? A. No, may I clarify it?

Q. No, I want an answer first. Is that all right, then you can clarify it. (2507) A. Yes.

Q. That is all right, is it? A. Yes.

Q. Are you familiar— A. Now may I clarify it, my answer?

Mr. Nizer: I will let your counsel do it.

Mr. VanVoorhis: I move the answer be stricken out unless the witness is allowed to answer this very ambiguous and complicated question.

Mr. Nizer: The witness answered it.

Mr. VanVoorhis: The witness answered it really under compulsion.

Mr. Nizer: I am not trying to cut him off but—

Mr. VanVoorhis: It did not ever appear what he meant. I don't think it is fair or accurate for him to be on record in a manner he didn't mean to be.

Mr. Nizer: I would not want there to be professional subjective judgments about these matters until I have proceeded with my questions and gotten answers to it.

Go ahead make this explanation.

Mr. VanVoorhis: There is a point where it ought to be tried. Now you can say what you please.

(2508) A. I would like to clarify it by giving an example. Suppose the question is that the underwriter should disclose the number of shares he owns in the issuer. He may own 100 shares. That is immaterial. But it may be specifically called for. If he writes it down wrong due to an error and puts 195 or only 105, it is wrong, but I don't think it is a duty in the sense that there is a legal duty to which he can be subjected to heavy penalties for it.

Q. Suppose he didn't put it by error but puts down part of the fact, suppose he and his wife, he being trustee for 50 shares he doesn't reveal 100 shares, but he puts down 50 deliberately, not error, do you say it is his duty to reveal the whole 100? A. Well, I think it is a duty in the general sense that anyone answering something ought to answer it accurately but I don't think it is a duty imposed by the Securities Act to necessarily be absolutely correct in something that is immaterial.

It makes no difference to the investor. It isn't a duty for which he could be censured.

The Court: Mr. Deer, you have constantly gone back to the Securities Act with respect to the nature of representations and statements of fact and whether or not they are material. Of course, there is a body of law quite independent from the Securities Act, and in existence (2509) long prior to the passage of the Securities Act of 1933 and 1934.

Are you circumscribing your answers here under the statute in the Federal Securities Act statutes? Did you recognize that there is a common law duty of disclosure of material facts?

The Witness: Yes, there is a common law duty of disclosure of material facts.

The Court: It has nothing at all to do with SEC, regulations, rules or statutes?

The Witness: That is correct.

By Mr. Nizer:

Q. Pursuing a question which—were you through, your Honor?

The Court: Yes.

Q. Pursuing a question which his Honor put to you, suppose that there was a loss of $50 million of exploration, as I may say parenthetically your own client testified, or at least there was testimony that a number of oil companies in Libya lost that with dry holes. Now this is a hypothetical question.

Suppose there was a loss. Under your theory of this alleged joint venture, Occidental—excuse me, Allen & Company would have been liable, as his Honor put (2510) it to you, I think, for 25 per cent contribution to that loss, wouldn't it? A. That's right.

Q. And now, suppose that there was a $50 million expenditure that was lost on this assumption and all that

resulted was dry holes, then Allen & Company under your theory at least would have to contribute $12,500,000, isn't that right? A. That's correct.

Q. So that Occidental, in the event of such a catastrophe would receive a substantial sum of money from Allen & Company under that assumption, would it not? A. Yes, it would.

Q. And Occidental, whose bonds were being bought would suffer not a $50 loss but a 37.5 million dollar loss, right? A. Right.

Q. And wouldn't the obligation of Allen & Company, as his Honor I think asked you in a question—wouldn't the obligation of Allen & Company even in the event of a loss, assuming a losing lottery, indicate to you that there was a material relationship with the issuer which might call for $12,500,000 under that assumption? A. Well—

(2511) Q. Isn't that the immaterial relationship, is my ultimate question. A. Perhaps if that eventually happened, it would be.

Q. And of course on that assumption the $12,500,000 obligation would be more than 20 per cent of the overall issue of $61 million, $62 million, approximately, that was the entire bond issue, wouldn't it? A. Yes, it would be, but don't forget you are talking about losing $50 million.

Q. Yes, I am. A. As a hypothetical.

Q. Oh, yes. A. But don't relate it to this prospectus that said they were only going to spend $15 million on all oil everywhere in the world over a period of two years.

The Court: Actually the evidence in the case indicates, I think several witnesses testified, that in the exploration of the oil fields in Libya, two American companies, I forget their names, each expended $50 million and wound up with a dry hole and also if my recollection is correct, a French

company dug and dug and dug to the tune of $25 million and wound up with a dry hole. These (2512) are not theoretical situations, according to the evidence in this case. And also, I call your attention to the fact that I think reference was made to it this morning, when I questioned Mr. Allen, that when it was sought to bring the Associated Gas into the picture, there was a discussion of several hundred million dollars being involved in this project.

A. Well, it certainly is true that companies very probably drilled 25 million, $50 million or even more, but that is a voluntary matter which is up to the manager of the venture. He doesn't have to, and it may well be that those that spent 25 or 50 million dollars are those who are well-able to do it.

The Court: Who has the judgment, according to your understanding of the agreement, the alleged agreement between the parties, as to what amounts were to be expended?

The Witness: Occidental.

The Court: Is that subject to any veto control on the part of Allen & Company under your interpretation of the agreement?

The Witness: No, I would say not. Occidental was the manager and the manager can exercise the control of the venture, the amounts to be invested.

The Court: What is the reference then to the (2513) words "subject to our mutual"—is that the term—"to be mutually agreed upon"? What does that refer to if Occidental had unlimited discretion in expending funds with respect to the exploration?

The Witness: Well, that gave Allen & Company a right to at least look to determine whether or not the expenses were reasonable and relevant to the venture.

The Court: Supposing you had decided the expenses were not reasonable and relevant?

The Witness: It could object to it on the accounting.

The Court: Well, assume that Occidental indicated it was prepared to spend $2.5 million and not get the money or was about to spend the money and asked for approval, can Allen & Company say yea, nay to that?

The Witness: They would have no right of veto on that.

The Court: Then you say that Occidental had unlimited authority to expend whatever sum in its judgment it deemed necessary in connection with the joint venture?

The Witness: That is correct, as long as it was reasonably related to the drilling program.

The Court: Well, I am only talking of expenditures (2514) related to the drilling program. They wouldn't have a right to spend money for Allen & Company in connection with any other project in which they were not interested.

The Witness: Well, there had been talk here of other ventures, of other aspects of the venture, possibly pipelines, that type of thing, which normally a manager of a drilling venture would not have.

The Court: All right, go ahead.

By Mr. Nizer:

Q. Would it be fair to say, Mr. Deer, that any reasonable investor, reading the description of the Libyan concessions in the prospectus, D11, would believe that said concessions belonged 100 per cent to Occidental? A. No, I wouldn't agree with that.

Q. Well, I show you the prospectus and would you be good enough to point out to me what there is that would give any notice to any prospective buyer that Occidental wasn't entitled to the full 100 per cent of anything that came out of these concessions. Would you please point it

out to his Honor and to me? A. Well, I don't know if there is anything specific as such, although I will look, but I think it is common knowledge in the oil business that you get concessions (2515) which are subject to various fractional interests, one-eighth interest to a landowner, something else.

Mr. VanVoorhis: Let him finish.

Mr. Nizer: No, I asked for an answer to my question.

Mr. VanVoorhis: I ask he be given an opportunity to finish his answer.

The Court: Yes, let him finish. You can move to strike if it is not responsive.

Mr. Nizer: I move to strike "it is common knowledge" from there on.

Q. And now I ask you again, Mr. Deer, wouldn't anyone reading that prospectus have a reasonable right to believe that Occidental wasn't entitled to the full 100 per cent of anything that came out of those concessions. Would you point out in that prospectus what indicates that to you? A. Well, there is quite a discussion here, but there is enough discussion to indicate that there may be interests carved out of here. For example, it says "Both Libyan concessions were awarded under the Petroleum Law of 1955 and amendments thereto, including the royal decree law of November '65, a 1/8 royalty is payable to the Libyan Government."

(2516) Q. Yes, that is the royalty paid to Libya? A. "Profits are subject to a 50 per cent Libyan income tax. The royalty is payable on posted prices and taxes payable on a base price and may vary from time to time," and there is something here about in addition to the provisions of the law, OxyLibya has agreed to apply the 2½ per cent of its profits to agricultural. I think anybody getting that might realize there were a number of interests carved out of that.

James W. Deer, for Plaintiff, Cross

Q. Mr. Deer, doesn't everything you read indicate the obligations Occidental would have to the Government of Libya if it found oil, taxes, percentages, interferences, a percentage of profits for certain agricultural. I am asking you whether a—what was left after the payments that were due to Libya—is there anything in that prospectus which would give any notice to any prospective purchaser that Occidental didn't own 100 per cent of the resulting profits after it paid everything it was bound to pay to the Government? Is there anything? Will you answer that first? A. I don't see it. I will say that.

Q. All right, thank you. Now I refer to P194, the letter of January 31, 1967. The letter sent by Herbert Allen to Dr. Hammer.

(2517) Mr. Greenspoon: Do you want us to give it to him?

Mr. Nizer: Not necessarily, unless he wants to look at it.

Q. Did you prepare that letter? A. I did not draft it originally. I reviewed it before it was finally signed and sent and made some—

Q. Who drafted it in the first instance? A. Herbert Allen, I believe.

Q. Was it dictated in your office or in Mr. Allen's office? A. My best recollection, the dictation was in his office.

Q. Had oil been discovered in Libya prior to your preparing or reviewing this letter, P194, dated January 31? A. I believe so. I think there was testimony that there had been oil in November—

Q. And you had that knowledge, didn't you, at the time that you looked at this letter before it was sent? A. Yes.

Q. Was it the Allens who told you prior to the sending of the January 31, 1967 letter that Occidental had made a discovery of oil in Libya? (2518) A. I don't recall how I learned that. I believe it was from the Allens.

Q. Before the discovery, this large discovery that was announced on January 31, 1967, the finding of a big oil find, had Allen & Company to your knowledge sent any letter similar to that of January 31 making any inquiry about this matter, similar to that letter? A. To Occidental?

Q. Yes. A. Not that I know of.

Q. Now I refer you to Exhibit P71, which is the letter of December 17, 1964, the alleged joint venture agreement. I call your attention to the ink modification or insertion appearing in the letter which says "Cost, to be mutually agreed upon" and I ask you whether you suggested that modification to Herbert Allen? A. Well, I have a vague recollection that Mr. Allen called me and read that letter to me, and I don't know who raised the suggestion first, but I think it was agreed between us that some modification like that would be appropriate.

Q. And what did you suggest to him that you say was agreed between you, or did he suggest it to you? He (2519) said you agreed between you. I want to be—I don't want to be unfair in interpreting that. Who was it that made the suggestion to insert "to be mutually agreed upon"? A. Well, as I say, I am not sure who raised the question first, but there was some, I think, discussion of procedure on it. He said he had the letter, if he wanted to make a change, it is maybe you could just initial it in, better than sending the letter back and asking for a new one.

Q. What change did he tell you he wanted to make? A. Well, I think he said the change—either he wanted to make or we agreed upon—would be that the expenses would be agreed upon.

Q. And did you say that to him or did he say that is a good suggestion? A. Well, I only have a very vague recollection on it.

Q. Is your vague recollection that you suggested that he better not sign it that way, but put in "costs to be

mutually agreed upon," and that he said that is a good suggestion? Is that your best recollection? A. Again I say I think it is a very vague recollection, I think that it is possible, if it is all right (2520) for me to say that, that he wanted something like that in, it was a question of procedure, and I said, well, you have either got to get a new letter from Dr. Hammer or you can put it in, maybe it is better to put it in.

Q. When you say "it in" what were the words that you suggested or did he suggest it? A. I didn't suggest any specific words.

Q. Did he read the words that he was going to put in? A. I don't recall.

Q. You don't recall that? A. Whether he did or not.

Q. Pardon? A. I don't recall whether he did or not.

Q. Well, how did the words "to be mutually agreed upon" get into the insertion? What is your best recollection of that? A. Well, my best recollection is that once the point was raised he had a letter from Dr. Hammer. As we discussed it we agreed that it might be appropriate to make some modification like that. I think maybe he wanted to call Dr. Hammer first before he put it in and agree on the language. I don't think I suggested any specific (2521) language.

Q. Did you know what words were being written in before you stopped talking to him? A. No.

Q. Pardon? A. No, I did not.

Q. Let me read to you from Page 80 of your deposition and see if this refreshes your recollection as to what you thought occurred at that time when you testified:

"Q. Perhaps there is a more technical way of getting at the fact. Since Herbert Allen wrote that in, I am asking you if that refreshes your recollection, whether that was done with some consultation? A. Maybe I got to revise the earlier statement. He might have called and read me this and I probably said, well, it talks about

sharing costs. Maybe you better define it. So it has to be mutually agreed upon, and he put it in."

Did you make those answers?

Mr. Greenspoon: Would you read the rest of the answer, please?

Mr. Nizer: I will in a moment.

Q. Did you make that answer to that question? A. I did.

(2522) Q. Is it a correct statement of your best recollection? A. At that time, yes.

Q. Have you a different one now? A. No, except it is even vaguer. It is a vague recollection.

Q. I read on, your continued answer:

"A. I have a kind of vague recollection of maybe I did, I think it was over the telephone, if it was."

Q. I was going to ask you, was anyone else present? A. No. It was a telephone conversation.

Q. It was a telephone conversation? A. Yes.

Q. As best as you can recall? A. Yes.

Q. Did you see this insertion which as best as you can recall came from your suggestion before it was sent to Dr. Hammer? A. I don't think so.

Q. Your memory is not refreshed now as to whether you actually saw the document you thought originally you hadn't seen it, but then you recall talking about it, and then making the suggestion. I now ask you whether it refreshes (2523) your recollection that you saw the change? A. No.

Q. It doesn't refresh your recollection? A. No. It does not refresh my recollection. I don't recall seeing it.

Q. You say that you suggested to make it mutual and so on, whatever you testified to. Did you dictate that over the phone or just orally tell him what to put in? A. No, if I had anything to do—at all to do with it, it was more

or less off the cuff, he called me and read it, and I said, well, whatever the costs are open, maybe you better say "to be agreed upon"—

Mr. Greenspoon: You left a word out, Mr. Nizer.

Mr. Nizer: "Maybe you better say there"—is that the word "there" you mean?

Mr. Greenspoon: Yes.

Q. "Maybe you better say there 'to be agreed upon,' and he said good suggestion, or whatever."

Did you make those answers to those questions? A. I did.

Q. I refer you to P72, letter dated December 24, 1964, from Herbert Allen to Dr. Hammer. The letter which says "I am returning herewith your letter of December 17 (2524) in duplicate with just one major change, and that is, that the costs should be "to be mutually agreed upon" and I have initialed the same. If there is no disagree in this matter will you be kind enough to send an initialed copy for my files. Kindest regards."

Did you see that letter before it was sent? A. No, I did not.

Q. Pardon? A. No, I did not.

Q. Was that letter, this covering letter that went along with the December 17 letter, in accord with your suggestion? A. Well, I think I said I have only a vague recollection of it, but if—I would have agreed with it. I don't know that I made a suggestion, but I would have agreed with it.

Q. Well, at Page 83, you were asked that question, "And is that letter, referring to P72, in accord with the suggestion you made to him"? "A. Yes."

Would you stand by that answer? A. I'll stand by that, yes.

Q. Now, you have told us here that you knew that (2525) oil exploration could be a costly matter and that

the manager of the enterprise could spend millions of dollars in it. You thought over that? A. Yes.

Q. And as an able lawyer, you sought to protect your client from too large or an unlimited commitment, didn't you? A. Well, at what time?

Q. At the time that you had the conversation and the words were inserted "to be mutually agreed upon"? A. Well, I wanted to protect our client from any collateral or irrelevant expenses that would have nothing to do with drilling for oil.

Q. Well, Mr. Deer, that is so as a matter of law, you didn't need any clauses for that. You are a good enough lawyer to know that. A. Well, don't forget, this was—

Q. No, wait a moment. My question is, you know that that is so as a matter of law. Before you give me an explanation, will you answer that question, please? A. Well, if it is a drilling venture, everything, of course, must be related to the drilling.

Q. Yes? (2526) A. The exploration.

Q. And if it were— A. But this was for obtaining concessions and sometimes a lot of money is spent for things not everyone would agree upon when you try to obtain the concession.

Q. I will even accept that for the purpose only of argument, you wanted to protect your client from being exposed to the costs of obtaining the concessions even though those costs were directly related to obtaining the concessions, is that right? A. Yes. I thought he should have had a right to agree.

Q. Just answer my question, please, without all these explanations. A. Yes.

Q. If you can. A. Yes.

Q. And wasn't the reason that you wanted the words "mutually agreed upon" in there was that your client would have the opportunity, if he felt the cost was too large, for whatever reason, not to go into the venture, to

have an out? Isn't that the real reason for the words "to be mutually agreed upon"? A. Not necessarily.
(2527) Q. Well, I didn't ask you whether necessarily. Isn't that the real reason? A. Well, would you read the question?

(Question read.)

A. When you say not to go in the venture, he was in the venture by signing that agreement. The purpose of the words was that he would not be subjected to expenses he didn't agree to in connection with obtaining concessions.

Q. Well, he wasn't in the venture if he had a right to say I don't want you to spend that much money to obtain the concession. He wouldn't be bound then, would he, under the very language that was inserted "to be mutually"—

Mr. Nizer: The gentleman here, please.

Yes, you.

Mr. Holtzmann: Please explain to me what you are addressing yourself to.

Mr. Nizer: All right, never mind. Let's go on, please.

Withdrawn. I was interrupted.

Mr. Lewis: By yourself.

Q. The words "to be mutually agreed upon" were inserted before the agreement was signed by Allen & Company, weren't they? (2528) A. Yes.

Q. And when the original letter was sent by Dr. Hammer, those words "to be mutually agreed upon" were not there, were they? That was an out and out straight obligation without those words, wasn't it? A. That's right.

Q. And Allen & Company didn't put its signature on that original letter until these words of modification were inserted, isn't that right? A. That's correct.

James W. Deer, for Plaintiff, Cross

Q. And wasn't the purpose of putting in the words "to be mutually agreed upon" to give your client that you tried to protect him, an opportunity to review the extent of the obligation before he went into it? Isn't that the purpose of those words? Can you answer that directly first? A. Before he went into it?

Q. Yes, before he was committed to either the losses that we talked about or the right to profit, he wanted to first be consulted with respect to the costs, didn't he? Now answer that, didn't he? A. Well, certain costs, yes.

Q. And he wanted to have an opportunity to say, "We must both agree before you as manager can spend this (2529) money," didn't he? A. Well, he didn't use the word "manager."

Q. Well, in effect before you can spend the money, he didn't use the word manager? A. Yes, but I would like to point out that at this stage the joint venture agreement provided that they were to be partners upon concessions obtained through Galic and through Allen & Company and Galic. Now they would have a control of those expenses, but they might not have a control of other expenses.

Q. Well, whatever preceded it, at the very end of the letter, after all those first eight lines about Occidental would share on the basis of 75 and 25 for anything that Ferdinand Galic turned up, then came the change, this includes sharing costs and profits, and you put in, or Mr. Allen, with your approval, put in, "this excludes sharing costs to be mutually agreed upon," and it is specially initialed by both parties, isn't it? A. Right.

Q. And as a lawyer, don't the words "to be mutually agreed upon" have a meaning to you? A. Yes.

Q. And isn't the obvious meaning of that, that if either side didn't agree with the amount of money to be (2530) expended in this venture, that they would not be bound, it had to be mutually agreed upon or there was no agree-

ment, isn't that what it means, just yes or no to that and I will accept your answer?

Mr. Greenspoon: Your Honor, I object to this yes or not. No one in the world could give a yes or no answer to that question.

Mr. Nizer: Really, to that question?

Mr. Greenspoon: Yes, sir.

A. Your question, as I understood it, was really whether if they didn't agree on the expenses they didn't have an agreement?

Q. That's right. A. I don't know that that follows. They could have had a joint venture, but still some of the expenses would not have been allowed.

Q. Well, didn't you say a few moments ago to his Honor that you understood that Occidental was to be the manager of this enterprise? A. In the operation of the exploration and the drilling.

Q. Of course, as his Honor said to you, I repeat, I am not talking of potash or building high rise apartments? (2531) A. No, no.

Q. I am talking of the oil concessions in Libya at all times. A. Yes, but there were two stages there, first the concessions had to be obtained and then the oil company, Occidental was going to manage the exploration and the drilling.

By the Court:

Q. I was going to ask you that, according to your last answer, are you now making a distinction between two separate phases of this proposed joint venture, is that correct? A. Yes, I think there were two phases.

Q. First the stage up to the grant of the concession? A. In which the parties look—

Q. And one after the grant of concession? A. Yes.

Q. Now, first with respect to the stage up to the grant of the concession, did Occidental understand the letter of

December 17 which used the phrase "to be mutually agreed upon" have the absolute discretion to expend whatever sums it decided was necessary in order to acquire the concession? A. I would not think so.

(2532) Q. Assuming the grant of the concession as it did, were to come about fast, would Occidental have the actual discretion to expend whatever sums of money it deemed necessary in exploring the blocks that had been granted? A. Yes.

Q. So you say that as far as the first phase was concerned the consent of Allen & Company was required? A. Right.

Q. And as to the second it was not required? A. Right.

Q. That Occidental could spend whatever amounts it as the manager determined was required in order to explore the concessions that had been granted? A. Yes, that is the normal arrangement.

Q. No, don't—I am referring to this agreement. A. Yes, I would concur with that.

Q. You make a distinction? A. Yes.

By Mr. Nizer:

Q. Now I refer you to the exhibit P124, dated July 16, 1965, which we have referred to here as the termination letter just for identification, and ask you whether you saw this—I believe you told us within a few (2533) days after the date it bears? A. Yes.

Q. Now, did you discuss that termination letter with Herbert Allen? A. Yes, I did.

Q. And with Charles Allen? A. Yes, I did.

Q. Was Charles present at the first conference of the discussion of P124 with Herbert Allen? A. I don't recall. I just don't remember whether I saw them both together or talked with them separately.

Q. Well, on Page 59, at the deposition, "I believe it was shown to me by Herbert Allen."

"Q. When? A. I believe it was in July of '65.

"Q. Who was present when Herbert Allen showed you this document about General DeRovin besides you and Herbert Allen? A. I don't believe anyone else was present.

"Q. Where was it, sir? A. At the Allen Company. Yes.

"Q. What was the purpose of his showing you this document if you recall? A. I believe that it arose in connection with a (2534) telegram which Allen & Company had received from Occidental Petroleum, which I think may have referred to General DeRovin, I am not sure.

"Q. That is your best recollection? A. Yes."

So does that refresh your recollection that at that conference Charles Allen was not present according to your testimony? A. Well, it would appear that way from what you read.

Q. Now, did you or your firm ever reply to Dr. Hammer's termination letter, as I call it, of July 16, 1965, on behalf of Allen & Company? A. Well, I never did. I don't think anyone else in the firm did.

Q. And you know, don't you, that for 18 months there was no written reply to that letter, right? A. Yes.

Q. Did you ever prepare a draft of a reply to be sent to Dr. Hammer? A. No.

Q. You have testified that you were asked for your opinion about this letter. Was your opinion given on the (2535) same day that you saw the termination letter of July 16? A. I think so, yes.

Q. How long after it was shown to you did you give an opinion? A. Oh, I think within an hour or two.

Q. Were you aware of the report regarding General DeRovin? A. Yes, I was aware of it.

Q. When you gave your opinion? A. Yes.

Q. Did you make any legal research within the hour to determine the relationship between Galic, DeRovin, Ogbi and its relationship upon Allen & Company's rights? A. Legal research? No.

Q. Did you believe that a written reply protesting Dr. Hammer's termination letter according to your testimony would prejudice your client's rights at that time? A. Did I believe it then?

Q. Yes, that it would prejudice the Allen & Company if you replied to that letter in writing? A. I don't know that I had an opinion then.

Q. What is your opinion now, had you written a letter saying, protesting his right to terminate, would that have (2536) prejudiced the Allen & Company? A. I doubt it.

Q. Did you suggest to the Allens the advisability of holding up their reply to Dr. Hammer's termination letter, P24, until they learned whether oil had been discovered? A. No.

Q. Did the Allens discuss that with you? A. No.

Q. Aside from P124, is this termination letter, do you know of any instance in your representation of the Allen & Company partnership or corporation or the Allens individually where Allen & Company failed to reply to any business communication received from Dr. Hammer regarding Libyan oil concessions? Do you know of a single such instance? A. No.

Q. Now, from reading the July 16, 1965, letter, you knew that Occidental had also terminated its relationship with DeRovin and Galic, didn't you? A. Right.

Q. Of course you knew that Allen & Company's rights, whatever they were, alleged rights, were conditioned upon the performance of Galic, didn't you? A. Yes.

(2537) Q. And since Galic and DeRovin—withdrawn.

And you knew that Galic and DeRovin were working together in this enterprise, didn't you? A. I didn't know how they were working.

Q. Well, you knew that it was DeRovin who had told Galic of the possibility which Galic then told to Allen. You knew that history, didn't you? A. Right. And I knew—it appeared from Occidental that they had employed both of them to do certain things.

Q. Oh, yes? At the suggestion of Mr. Herbert Allen and the conferences that succeeded that suggestion, is that right? A. I don't know whose suggestion. It appeared they were both working for Occidental. I don't know what each was doing.

Q. Did you find in the file at the time the employment contracts between Occidental and Galic, and Occidental and DeRovin? A. I don't recall.

Q. Attached to the letter of July 16, weren't there copies of cables by Occidental to Galic and DeRovin which accompanied the report on DeRovin? A. Yes.

Q. And you read all that? (2538) A. Yes.

Q. You knew the report on DeRovin came from Klehe & Company, didn't you? A. Yes.

Q. And you knew that Occidental had a financial interest —withdrawn.

You knew that Allen & Company had a financial interest in Klehe & Company, didn't you, at that time? A. Yes.

Q. And did you know from the files that Galic had praised DeRovin as a man of high standing? A. I don't recall that.

Q. You saw in the file, P28, a letter of August 29, 1964. Perhaps this will refresh your mind—in which Galic wrote to Charles Allen "as you know I got in touch with Occidental Petroleum for Allen & Company for the Libyan deal. By a good relation of mine, General DeRovin, who rendered good services to the Libyan royal family. He is a person of great influence in this country."

You saw that in the file at the time? A. I have no independent recollection of it now.

Q. Did you study all the papers of the file within that brief span, or didn't you? (2539) A. Yes.

Q. By brief span, I mean within the approximate hour in which you gave an opinion, did you? A. Yes.

Q. In view of the report on DeRovin among other things, which exposed DeRovin as you saw in the report, didn't you, as a swindler, collaborationist with the Nazi, con-

demned to death for treason, a convict—did you believe it reasonable at the time for Occidental to terminate its relationship with DeRovin? A. If those facts were true I think it might have been reasonable for it to be terminated.

Q. Well, you told us that this report came from Klehe & Company. You consider them responsible, didn't you? A. I considered Klehe & Co. responsible, but I think Klehe & Co. had merely transmitted a report which they had received from somebody.

Q. Didn't you know Klehe & Co. had also terminated its relationship with DeRovin because of a report that it had drawn? Didn't you know that? A. I think yes, I read it at that time.

(2540) Q. So you had no reason to doubt the general substance of that terrible report about DeRovin, did you? A. Well, I had no reason to doubt it? Had no reason to believe it or to doubt it.

Q. You thought Klehe & Company was forwarding this report even though they had not looked into the matter before giving it to Allen & Company? A. I don't know what they did before they forwarded the report.

Q. Did the Allens agree with Klehe & Company about the discharge, at least, of DeRovin? A. I don't know.

Q. Didn't they tell you that? A. No, I don't recall any discussion whether they agreed with Klehe & Co.'s action or not.

Q. Did you discuss with either of the Allens, after reading this report on DeRovin, how they felt about the DeRovin association in this matter? A. I don't recall.

Q. You didn't take that into consideration as a subject for injury before you gave your opinion, right? A. Well, you say take it into consideration; I had been asked to render an opinion as to whether or not the purported termination by this letter of July 16th was binding (2541) on Allen & Company. This report on General DeRovin

had come from Klehe & Co. through Allen & Company four months before and—

Q. That's right, and my question was, did you discuss with the Allens how they felt about the accuracy of the DeRovin report and whether they had checked with Klehe & Company? A. I believe Herbert Allen said that he got the report and simply sent it on to Dr. Hammer.

Q. Do you think he sent it on to Dr. Hammer because he felt that it was a warning that this was serious and that he ought to advise Dr. Hammer? A. I think that is the reason he sent it, yes.

Q. And did you share that opinion, that this report indicated that you and in any relationship you had in the matter, meaning Allen & Company by you, was tied up with a very disreputable character? A. Well, a character at least as to whom a disreputable report had been written, I don't think we had the means to check it.

Q. What was the financial relationship, if you know, between Klehe & Company and Allen & Company? A. Well to the best of my knowledge, it is a very small relationship. Maybe Allen & Company owns five to fifteen (2542) per cent of Klehe & Co.

Q. Was there a close relationship between Mr. Benahum, of Klehe & Company, and Allen & Company? A. Well, there was no official relationship in the sense that he was an employee or partner—

Q. No, a personal relationship? A. I think he knew the Allen partners and he had from time to time presented deals to Allen & Company.

Q. And wasn't Benahum very close socially and personally with the Allens, individually? A. I think so. I really don't know.

Q. Didn't the Allens take the position that so far as DeRovin was concerned Dr. Hammer was justified in disassociating himself from DeRovin, through that cable, a copy of which you saw? A. I don't recall that they ever took a position on it.

Q. You have no recollection, one way or another? A. That they ever took a position on Dr. Hammer's right to fire DeRovin?

Q. Even though you gave an opinion within an hour, you don't recall making any inquiry as to whether either Allen & Company or Occidental felt, through Allen & Company, that DeRovin should be disposed of as a representative of Allen & Company or Occidental, did you? (2543) A. No. I don't think Allen & Company knew whether the facts were true or not in the report.

Q. Did you ever pursue that to find out whether they were correct? A. No.

Q. To this day, have you ever checked it? A. No.

Q. And you gave an opinion within an hour, nevertheless, right? A. I gave an opinion that—

Q. I know what the opinion was. A. It had nothing to do with General DeRovin.

Q. It didn't? A. No.

Q. Didn't you know that Galic had been, and I think you told us you did—that Galic had been advised of this possibility in Libya through DeRovin who was, as I read to you from the letter—that he was a very influential man, highly thought of in Libya? Didn't you see that right in the file? A. Oh, yes. Galic might have heard of the deal from DeRovin, but that doesn't mean anything.

Q. Did you give any consideration to the question of whether Occidental's consent to what you called the (2544) joint venture was fraudulently induced by Galic's representations concerning DeRovin?

Mr. Greenspoon: Your Honor, we object to this as grossly improper cross.

The Court: Overruled.

Q. Did you? A. Did I give any consideration to it?

Q. Yes, to that question, whether Occidental's consent to the alleged joint venture was fraudulently induced by Galic's representations concerning DeRovin? Did you

give any thought to that at all? A. I don't recall whether I did or not.

> The Court: I have allowed the question because the witness this morning stated that when he received the letter—that is, when Allen & Company received the letter and he saw it he regarded it as meaningless. Consequently, I think it is a proper item of cross examination.

Q. You have told us that you were present when Charles and Herbert testified here and you heard, therefore, did you not, their testimony, and if you want me to read it to you, I will, that they, each of them, said they had no knowledge of what services Galic was performing or had performed in obtaining the Libyan concessions, so far as they personally were concerned? You heard that testimony, (2545) didn't you? A. Yes.

Q. And, of course, in July, 1965, you had no knowledge of what services, if any, Galic had performed at that time, did you? A. No.

Q. So before giving your opinion, that this termination letter could be ignored or at least not replied to, whatever your answer was, you made no investigation on the subject of what Galic had done to perform his duty, did you? A. No.

Q. At the time that you gave the opinion you testified to within that hour, were you aware of the fact that concessions were to be awarded on the basis of sealed bids? A. I don't recall.

Q. Did you inquire or were you aware before inquiring that almost all major oil companies were competing through sealed bids for these concessions? A. I don't recall.

Q. Or that the bids were to be reviewed by the High Petroleum Council made up of nine members, five of whom were cabinet ministers? A. No, I didn't know what the procedure was.

Q. Or that the bids would be finally determined by (2546) a full cabinet of ministers on the merits? A. No, I didn't know what the procedure was.

Q. In order to give an opinion as to whether the termination letter was effective, one would have to know whether there was cause to discharge Galic? That's right, isn't it? A. One would want to consider that, yes.

Q. And, yet, as you have told us, without any knowledge of what Galic's tie-in with DeRovin was, as I think you have told us—at least you weren't sure—and without knowing any of the other matters I have referred to, without summarizing them again, you were unable to form an opinion, really, as to whether Galic had been discharged for cause or not, were you? A. Well, when you say discharged for cause—

Q. Yes. A. —he was discharged, I think, in connection with perhaps his employment with Occidental, which may have been something other than the joint venture here.

The Court: Something other than what?

The Witness: Than the joint venture.

Q. What information did you have of any other cause for the discharge of Galic by Occidental? Did you at that time, in July, 1965, know of any other cause?

(2547) Mr. VanVoorhis: I object to that as unfair cross examination.

The Court: Let me hear the question again.

Mr. VanVoorhis: It is the same as the other reasons than the discovery of oil, a precise duplicate of what was done before.

(Question read)

The Court: Sustained as to form.

I have to interrupt for a few minutes. There is an emergency call from a colleague.

(Recess)

James W. Deer, for Plaintiff, Cross

By Mr. Nizer:

Q. You told us that you had no knowledge of precisely Galic's tie-in with DeRovin, at least you were not sure what it was, or what services had Galic had performed. Now, without that knowledge, you didn't know whether Galic had been discharged for cause or not, did you? A. No. I was trying to recall the wording of the telegram. I am not certain it mentioned cause.

Q. And even without— A. May I look at the telegram?

(Document handed to the witness.)

A. All it says is, "In accordance with terms of our September 18, 1964, agreement we wish to advise you that (2548) we will not utilize your intervention or services in acquiring oil and gas concessions in Libya and hence consider ourselves free of any obligations whatsoever toward you (stop). We hereby release you from any obligation to abstain from negotiating with any other party (stop) Similar notice has been sent to your associate, General DeRovin."

That seemed to be my recollection, that no cause had been cited.

Mr. Nizer: Show him the letter that accompanied that telegram of July 16, 1965, from Occidental to Herbert Allen.

Please read the third paragraph out loud.

A. "In light of your letter to me of March 16, 1965, enclosing the report on General DeRovin, any association that we would have with him would prejudice any possibility we would have of getting any concessions in Libya and I made this perfectly clear to Mr. Galic."

Q. You had no opinion, then, one way or the other, to be modest about it, as to whether there was any sufficient investigation to determine whether Galic had been discharged by Occidental for cause or not, did you?

Mr. VanVoorhis: We object to the use of the word "sufficient." It really contains the answer in the question.

(2549) The Court: Overruled.

A. Did I have any sufficient knowledge as to—

Q. Did you have any knowledge as to whether Galic had been discharged for cause? You didn't know what he had done—you have told us that, haven't you? A. Right.

Q. And you didn't inquire or investigate that subject, did you? A. No.

Q. Don't shake your head. Please answer. A. No.

Q. And you have told us that you saw the report on DeRovin? A. Right.

Q. And you knew the relationship as described in the August 29th letter between DeRovin and Galic, Galic praising him as a very fine man—you knew that? A. I don't know that he praised him as a fine man. He said he was a man of influence.

Q. All right, and "high standing" was the language I read. We won't quibble about the words. And therefore you had made no further investigation of facts or law to determine whether Galic had been discharged for cause, had you, at that time in July, 1965? (2550) A. No.

Q. Isn't that correct? A. Yes, that's correct.

Q. Now, without having made such an inquiry or come to such a conclusion, you nevertheless advised your client that the termination letter was meaningless? A. That's right.

Q. Knowing that you were advising them not even to make a written reply, to put themselves on record as rejecting this termination, did you take the precaution as a lawyer of making a memorandum for your own file of your advice to that effect? A. No, I did not.

Q. Now, isn't the plain fact, Mr. Deer, that the Allens had decided, to your knowledge, to lay low and not reply to the letter so that if oil were found they could make

a claim and if oil wasn't found they could say, "You terminated and we owe you no money"? Isn't that the plain reason of the strategy for not replying to that letter? A. To my knowledge, absolutely not.

Q. Wasn't it a "heads I win, tails you lose" strategy, as one of the cases described it?

Mr. VanVoorhis: I object to that. That is argumentative.

(2551) A. Absolutely not.

Q. When did you first see P159, the copy of the Kabazi letter? A. I saw that during the period of November, 1966, January, 1967, when I was reviewing the file, to advise Allen & Company of its rights.

Q. Now, can you place that a little better? Could it have been in the spring of 1967? A. That I saw it for the first time?

Q. Yes. A. I believe it was in that file I reviewed.

Q. I say, haven't you testified that you are not certain of the date and that it could have been in the spring of 1967 that you saw it for the first time? A. Well, I think in my deposition I said I was not certain when I saw it, and you said then it was possible I could have seen it in the spring.

Q. No, I didn't say it; I am asking you whether you said it. A. When you asked the question, I said yes.

Q. You said it could have been in the spring of 1967? A. Yes.

Q. Your memory wasn't clear on that at that time, (2552) is that right? A. Right.

Q. Have you read Mr. Holtzmann's deposition in this case, your law partner? A. I read it prior to the time I gave the deposition, in 1970. I have not read it since.

Q. Have you ever talked to him about when he first saw the Kabazi letter, your partners in your office? A. No.

James W. Deer, for Plaintiff, Re-direct

Q. Did you read in his deposition that he first saw the Kabazi letter in the spring of 1967? A. I think I recall reading that.

Q. Did Galic ever send you a copy of the Kabazi letter? A. No.

Q. Are you aware of his testimony that the only letter, copy of the Kabazi letter he sent was to Mr. Holtzmann? You are aware of that, aren't you? A. I don't recall that. I have never read his deposition or listened to the reading of it here.

Q. To your knowledge, did Mr. Galic send a copy of the Kabazi letter to anyone else in your firm except Mr. Holtzmann? A. No.

(2553) Q. Did Mr. Kabazi ever send you or to your knowledge your law firm a copy of the letter to Galic dated February 16, 1966, bearing that date? A. No.

Q. Did Galic ever ask you or to your knowledge your law firm for a copy of the Kabazi letter? A. Not that I know of. He never asked me for it.

Mr. Nizer: No further questions at this time, your Honor.

* * *

Re-direct Examination by Mr. VanVoorhis:

Q. Mr. Deer, with relation to the matter concerning which you were just questioned by Mr. Nizer, did you testify at page 50 of your EBT in relation to the Kabazi letter:

"A. I may have seen it. I have a recollection that that was one of the papers I had in front of me when I was talking to Mr. Galic and generally getting the factual background in November of 1966.

"Q. Now, have you a clear recollection that you (2554) saw this letter dated February 16th and you volunteered that date without looking at any notes, didn't you? A. Yes.

"Q. February 16, 1966, that you saw that for the first time, you have a definite recollection, in November of 1966? A. It is very difficult for me to be positive. I just—my best recollection is that this was one of the documents I saw when I was generally considering it at that time.

"Q. Could it have been in 1967, the spring of 1967? A. It could have been, but my best recollection is that I saw it earlier."

Did you so testify? A. Yes, I did.

Q. And is that your present recollection also? A. Yes.

Q. You were questioned with respect to whether there was any conversation between you and either of the Allens with reference to the so-called abandonment or termination letter. Did either of the Allens say to you or in your presence or to your knowledge that they consented to the discharge of Galic by Occidental? (2555) A. No.

Q. Were you ever advised that DeRovin had committed any illegal acts in connection with the Libyan concessions? A. No.

Q. Was Allen, to your knowledge, advised by or informed by Occidental that DeRovin was to be discharged before that action was taken? A. No.

Q. In reference to your cross examination in regard to the letter relating to the joint venture agreement dated December 17, 1964, would it be your opinion or do I understand correctly the upshot of your statement to be that the consent of the Allens, Allen & Company, to expenditures in the advancement of the venture could not be unreasonably refused?

Mr. Nizer: Oh, I object to that.

The Court: I don't think the witness testified to that at all. I will allow you to interrogate the witness, but he is your witness. You may interrogate him about it.

Mr. VanVoorhis: I take it the objection is sustained on account of the form of the question?

The Court: Yes.

Q. In your judgment, Mr. Deer, do you consider as a matter of opinion that the joint venture arrangement (2556) insofar as it is memorialized in the letter of December 17, 1964, was subject to any absolute veto—

* * *

Q. —on the part of Allen & Company?

* * *

A. The answer is no.

* * *

Q. And under what circumstances do you consider that the consent of Allen & Company could be refused?

* * *

A. Well, I think Allen & Company could have objected to sharing expenses on various collateral matters which (2557) might have perhaps been encompassed by Occidental in connection with the venture, such as building pipelines, agricultural plants.

The Court: Well, pipelines would come into play only after the concession had been granted?

The Witness: That is correct.

Q. Well, could Allen & Company, in your opinion, unreasonably withhold its consent for expenditures relating to obtaining or exploiting the concessions?

* * *

A. No.

Q. You were questioned on cross examination with regard to your correction of a question which was asked of you at page 106 of your deposition:

"Q. Do you know of any reason that was assigned for (2558) going into a series of conferences at the end of

1966 about this matter except for this information you now know is a fact? Will you answer that?

"Your objection is reserved. You may even be right, but let's go on. A. I should answer it?

"Q. You can answer it.

"The objection is as to form. A. Do I know of any reason other than the discovery of oil why we—

"Q. Yes. A. No, I don't know of any other reason," and you testified that in correcting the transcript of the testimony when it was completed at a later date you caused to be stricken "other than the discovery of oil" and "I don't know of any other reason"—do you recall being questioned about that? A. Yes, I do.

Q. Now, I want to ask you whether at the time of your testimony when this EBT was given and prior to any lapse of time between its transcription and your reading it, did you testify at page 33:

"Q. Do you recall whether the announcement of the discovery of oil in Libya triggered your calling for these (2559) documents, that is to say, the files in regard to this subject? A. I don't believe that it did, no."

Did you so testify? A. I did.

* * *

Re-cross Examination by Mr. Nizer:

Q. You told us that in addition to SEC work you have also done corporate work, contract work, is that right? A. That's correct.

Q. You are familiar with a device whereby if you don't want a consent which is required in a contract to be absolute you can put in a modification clause saying "Consent not to be unreasonably withheld"? Are you familiar with that technique, that device? A. Yes, I have seen it in contracts.

James W. Deer, for Plaintiff, Re-cross

Q. And very often when someone wants to insert that (2560) the other side objects or, if they agree, then the clause is changed substantially, isn't it? It means you have to be reasonable if you refuse, right? A. Right.

Q. Have you ever dealt with artists' contracts where that becomes a very important matter, a motion picture or theatrical contract, where they fight over whether you can unreasonably withhold consent from a script or selection of an artist? You have had some familiarity with that? A. I have not, in that field. I see it more on leases.

Q. So you are familiar with that, and if you wanted to put in that the mutual consent must not be unreasonably withheld, you know just how to do it by inserting that language? A. Yes.

Q. And you didn't do it here? A. No.

* * *

(2563) New York, New York.
October 5, 1973—10:00 A.M.

(Trial resumed.)

Mr. Greenspoon: Your Honor, we are going to submit some documents. Mr. Nizer will let me know which ones he does or does not object to.

Mr. Nizer: I can make a brief statement and address myself to each document. That will be clearer. These are in the most part letters written by the geologist whom we had retained for special work in 1963. We therefore object to most of them on the ground they are irrelevant, removed from subject matter of this controversy, are not binding on us and are hearsay.

There are a few that get into '64 and even though we don't think their contents are relevant, I will

not object in order to dispose of those. I will mention those as we go along.

In many instances, or at least let me say in some, these documents of later date were submitted, as (2564) I previously advised your Honor to Judge Lasker to determine their relevancy, when the question came up as to whether Lawler's letters could be offered at all, and he held that they were not relevant, and as I say, while that is not at all binding on this Court, I submit it for whatever consideration your Honor wishes to give it on the merits, since I don't think they are relevant.

So as you go along, having made this overall statement, I will tell you which I do not object to, which I do, and the date and so on. I think it will be better than trying to do it all in one lump.

Mr. Greenspoon: The only point I can make in response to what Mr. Nizer just said, your Honor is this. We don't know what was submitted to Judge Lasker, I believe it was, but we do know one thing, that the earliest dated document, according to Mr. Nizer's statement on the record, was October 16, 1964, and it is true that—

Mr. Nizer: That is correct.

Mr. Greenspoon: So obviously it didn't even come past these documents.

Mr. Nizer: No, that is '63.

Mr. Greenspoon: Principally these documents are on certain issues of credibility, also on the (2565) substantive question, which we think may be substantive, and certainly credibility, of whether or not at the London conference Mr. Hammer, as he testified on the deposition, really is the one who proposed 59, which is the one that ultimately was obtained.

The Court: What?

Colloquy

Mr. Greenspoon: Concession released area No. 59, which was then broken down into 42B and 44 in part, and which were the concessions ultimately obtained.

It also has to be kept in mind in this connection, your Honor, that the interrogatories from the Thompson case showed, according to plaintiff and defendant, that they relied solely on the geological information obtained from Lawler and from Vaughan, and Vaughan's testimony is that he got called in in July or August of 1964, went over the files, found absolutely nothing there of value except one map set, which he said had been prepared by Lawler, so we are going to attempt to show here that Mr. Hammer had no information concerning 59 when he was in London. We also want to show that all of this emphasis put on the ammonia plant is not the fact, as the defendant knew at the time, and that the areas which had been recommended to them did not include 59 at any time prior to September (2566) September 18, 1964.

And the first document we offer in evidence is Plaintiff's Exhibit 3 for identification. That is from Mr. Gray who incidentally at that time according to the record before Honor was in charge of international matters for the defendant, written to Mr. Lawler who held a power of attorney at that time I believe, according to the record also.

Mr. Nizer: I do object to that. It is 1963, it is remote, irrelevant, it impeaches nothing and nobody. I invite counsel to state where there is anything in the record to which this is addressed for impeachment.

Mr. Greenspoon: This is the beginning of the released areas which were recommended and of which Dr. Hammer had knowledge as of September 1964, and none of which included released area 59.

Mr. Nizer: I don't understand that.

The Court: I don't follow you understand that either. Will you please explain that to me? I think we are going far afield in there, in this situation.

Mr. Greenspoon: All right, your Honor, here Mr. Gray—

The Court: This is 1963. What has this really (2567) got to do in terms of direct relevancy to the specific issues in this case?

Mr. Greenspoon: It has this to do, your Honor: Dr. Hammer testified that in September he had received geological information—

The Court: Tell me what year.

Mr. Greenspoon: September '64. That he had received geological information from his geologist which told him that 59 was one of the desirable concession areas. We will show through a series of correspondence that so far as Lawler was concerned, 59 was at no time recommended, Vaughan had no knowledge on the subject; that it was not until after September 1964 that 59 cropped up in the correspondence between Vaughan and Lawler establishing that it was not Hammer, but our people who brought to the London conference the notion of acquiring part of or all of concession 59.

Mr. Nizer: Whatever there is to that alleged syllogism is completely faulty. The released areas mean that prior holders of concessions had to give up after a number of years their rights to those concessions. That is released areas.

Concession numbers of what we want is another number and there is the report of Mr. Vaughan before (2568) your Honor in which he recommended either specific block numbers, whether they were in the prior released areas or not in 1963. The two have no relationship to each other. This is so far-

fetched and remote that it is most difficult to follow even the thinnest threads of it.

Mr. Greenspoon: We know that the Vaughan report was written after October when Vaughan made his trip to Libya, October 1964, and probably in November 1964, so we don't think that really touches this issue.

Mr. Nizer: Furthermore, as I recall it, I hope we will have it in a moment, Mr. Galic testified in his deposition that it was Dr. Hammer who picked 59, so that if you are impeaching anybody you are trying to impeach your own witness.

Mr. Greenspoon: It was also Galic who testified that with respect to—under cross examination, to the two concessions which DeRovin and Ogbi had said were going to be obtained, and he said those numbers were in the Ogbi agreement and one of them is 59.

The Court: I must say that I haven't seen anything in this letter that touches on what you are trying to, Mr. Greenspoon. Will you point specifically to me what you are referring to?

(2569) Mr. Greenspoon: Yes. "You will recall that on Sunday you mentioned that the three months desirable concessions for inclusion in our application are 43, 33 and 28."

The Court: What does that prove?

Mr. Greenspoon: All right. That proves that up to this point at least, 59 had not been recommended to Dr. Hammer, up to this point. Of course we have to trace it.

The Court: I don't follow that at all, simply because there is a statement in there, how that excludes any other block or any other area.

Mr. Greenspoon: Because he says the three months desirable concessions certainly, it does not

cover 59, so we must assume that at that point, all that was before Occidental was 43, 33 and—

The Court: What happened between September 23, 1963 and the latter part of 1964? How does that exclude any other situation in between? All right, I don't see any point in arguing this. It is really of minimum relevance. I think you are straining at gnats at this point in the trial. I think perhaps you gentlemen have reached the point of frayed nerves. You people ought to have a sense of balance in terms of what is being (2570) offered in the case. Perhaps I made a mistake at the start of the trial in agreeing to take a matter whether it was on the surface relevant or not, especially with the view that I would only consider matter that was relevant or material.

Put it in. I think it is easier than arguing about it. I have no hesitancy in stating that I don't see the relevance of this at all even in the light of your argument at this point.

(Plaintiff's Exhibit 3 for identification was received in evidence.)

The Court: Put it all in and let's move on.

Mr. Greenspoon: We will withdraw 10.

The Court: You have a record here of several hundred exhibits. I think they can be stripped down actually to about 40 that have any meaning in the case.

Mr. Greenspoon: Plaintiff's Exhibit 14.

Mr. Nizer: You offer that?

Mr. Greenspoon: Yes. That deals with the point that has been made here that there was something esoteric about Occidental's position with respect to the utilization of gas, the flaring of gas, and we just want to point out that that seemed to be a standard thing (2571) with everybody.

Mr. Nizer: I object to this as irrelevant, it is 1963, remote, hearsay from an independent contractor, Lawler to Gray, filled with hearsay conversation by Lawler with third parties, no impeachment even claimed of anything. But if your Honor wants to accept it subject to the kind of observation you made, maybe we will save time. I can't see any possible relevance.

If I am not interrupting, your Honor, there is a brief paragraph on the second page, the third paragraph. If it has any, any relevance at all in this remote sense, just listen to it: "He tells me—" he was with Moith Collins—"he tells me he has given up his attempt to get clients for concessions for," as he put it, "no one needs a middle man any more."

The Court: Well, we will take it.

(Plaintiff's Exhibit 14 for identification was received in evidence.)

Mr. Greenspoon: 19 and 20, your Honor, relate to the same thing.

Mr. Nizer: You are withdrawing 18?

Mr. Greenspoon: Yes. 19 and 20, your Honor, relate to the same subject as more recommendations with (2572) respect to what should be acquired or what was the best concessions. This was never shown to us. If you claim this is one to be offered, do you have a copy to show to us? You didn't put it on your list, did you?

Mr. Greenspoon: Yes, it was on our list.

The Court: Let me see the first exhibit that was received.

Mr. Nizer: I object to both of these on the same grounds.

The Court: Of course, quite the contrary, this shows he was making all kinds of recommendations.

They are quite different from those contained in the letter of September 25.

I must say this is really of minimal relevance if it is of any at all, but if you want it in the record, put it in the record. An exchange of correspondence between two men discussing prospective applications and shifting from one to the other.

(Plaintiff's Exhibit 19 was received in evidence.)

Mr. Greenspoon: P21, P22, P23 are offered for impeachment of Vaughan. Vaughan testified about the undying interest to go into Libya. This is designed to show that until Allen came along Occidental had not made up its (2573) mind that it was even going to go into Libya.

Mr. Nizer: Where do you find that, sir?

Mr. Greenspoon: All right, in 21, it says—Gray is writing to Lawler and says would you do thus and so so that you and we have a chance to see whether we would proceed with Libya. The next one is from Lawler to Gray and it says, "I presume you have decided as Dr. Hammer stated in Paris in January not to attempt to obtain Libyan concessions along at present."

The Court: What?

Mr. Greenspoon: "Not to obtain Libyan concessions alone at present."

The Court: What does that prove again?

Mr. Greenspoon: Well, we are told by Mr. Vaughan—

The Court: Oh, come, let's move on. It is almost getting to be tortuous reasoning here. I don't hesitate to state that on the record. Let's remember what we are trying. Let's remember the issues as they are framed under the complaint. Let's not distort the issue by suggesting the matter is being offered for the purpose of impeaching witnesses.

Colloquy

Mr. VanVoorhis: Your Honor, I think it (2574) ought to be noted that the contention of the plaintiff—

The Court: Pardon?

Mr. VanVoorhis: That the contention of the plaintiff that these events were set in motion at the instigation of Galic through the Allens and to Hammer in 1964 has been attempted to be controverted by defendant on the basis that they were already established to some extent.

The Court: Well, I don't really have that picture at all. They may have made some argument about it. I think that their starting point really is 1964.

Is there any question about that, Mr. Nizer?

Mr. Nizer: None, your Honor.

The Court: That the events preceding some period of time before August 1964. Why are we spending so much time on it?

Mr. VanVoorhis: This I think is a rather recent concession.

The Court: Well, this is the way it has come through to me, throughout this entire trial. I must say with due respect to the lawyers in this case on both sides that it has been overtried with an injection of as much matter, testimony and exhibits, that go far beyond the (2575) scope of the issues in the case, and to me, as I sit here now, at the end of four weeks, I see them as comparatively simple issues that I am going to present to you in time.

I am taking everything at this point.

(Plaintiff's Exhibits P21, P22 and P23 were received in evidence.)

The Court: Let's move along. Do you have any additional exhibits, Mr. Greenspoon?

(2576) Mr. Greenspoon: P52 is offered merely to show that for the first time after the London meeting 59 gets mentioned in the correspondence.

Mr. Nizer: This is one, your Honor, that Judge Lasker ruled irrelevant after a study of it and it demonstrates that Lawler is not Occidental's employee, a hired expert for a limited time for part-time service.

We don't object to this, therefore.

(Plaintiff's Exhibit P52 received in evidence.)

Mr. Greenspoon: 55 is merely offered to complete the triangle of correspondence.

Mr. Nizer: It is irrelevant, but we don't object. It is a cable that has no meaning whatsoever. We don't object to it in view of his Honor's comment on the record.

(Plaintiff's Exhibit P55 received in evidence.)

The Court: What is P55?

Mr. Greenspoon: A cable.

The Court: A cable to whom?

Mr. Greenspoon: Vaughan to Lawler, your Honor. It just completes the trilogy of the two other letters which are in and this is an intervening matter.

We offer 100.

The Court: It may be received.

(Plaintiff's Exhibit P100 received in evidence.)

(2577) Mr. Nizer: 104, do you want to offer that?

Mr. Greenspoon: Do you want it in?

Mr. Nizer: Do you withdraw that?

Mr. Greenspoon: Yes.

119 we offer merely for purposes of showing that it corroborates the telephone conversation which Galic says he had with Hammer.

Mr. Nizer: This is concerning the Ogbi loan?

Mr. Greenspoon: No, it concerns a meeting which is being set up.

Mr. Nizer: Yes, it is the loan and then it says, "Tomorrow we have an appointment in Tripoli." That is what you want it for? All right.

The Clerk: You are not objecting to 119, Mr. Nizer?

Mr. Nizer: No.

(Plaintiff's Exhibit P119 received in evidence.)

Mr. Greenspoon: We are offering 120 and 121. This is a straight issue of credibility, where they denied using the term "gold dust twins." It is the same kind of attack made on Galic and we think what is sauce for the goose is sauce for the gander.

Mr. Nizer: That is not a correct statement but, again, go ahead. There was no question of Dr. Hammer (2578) about this. It happens to be a Hammer cable. However, in view of the observations made by his Honor—

(Plaintiff's Exhibits P120 and P121 received in evidence.)

Mr. Greenspoon: We offer 186, your Honor, solely because it was read involving the testimony and it is the other release which was mentioned as having been given by Galic in August of 1966.

Mr. Nizer: This confirms the tie-in by assignments and financial arrangements, even the necessity of release between what Galic called the tied-in group and the operators, Galic, Ogbi, De Rovin. We have no objection to this.

Mr. Greenspoon: Which of course, was asked for by Dr. Hammer.

Mr. Nizer: It is part of the settlement discussions, but if you want it in, you can have it.

(Plaintiff's Exhibit P186 received in evidence.)

Mr. Greenspoon: I now read the answer to Interrogatory No. 24, which was served by the plaintiff upon the defendant. The question is self evi-

dent from the answer and I will just read the answer:

"Defendants' records in Los Angeles, California, and in New York City, New York, show the following telephone (2579) calls placed either by Ferdinand Galic or by Dr. Armand Hammer during the period in question but do not indicate whether the telephone call actually went through to the party for whom it was placed. Thus, Ferdinand Galic placed the following calls to Dr. Hammer in Los Angeles or in New York City:

"November 25, 1964, January 25, 1965"—

Mr. Nizer: January 5, it says.

Mr. Greenspoon: Didn't I say 5?

Mr. Nizer: You said 25.

Mr. Greenspoon: "January 5, 1965; January 29, 1965; February 8, 1965; February 18, 1965; February 25, 1965, February 26, 1965; March 2, 1965; March 15, 1965; March 23, 1965; March 31, 1965; May 26, 1966; May 31, 1966; June 1, 1966; August 22, 1966; August 26, 1966 September 6, 1966 September 12, 1966; September 16, 1966; September 20, 1966; September 30, 1966; October 24, 1966; October 28, 1966; November 16, 1966; January 31, 1967; February 1, 1967; April 17, 1967; April 21, 1967.

"During the same period, Dr. Hammer placed the following calls to Mr. Galic:

"August 25, 1966; August 27, 1966; October 4, 1966; January 11, 1967."

Then the answer to interrogatory number 25, and (2580) since the answer sets forth the question, I will just read the answer:

"The records of defendant do not show the precise date Mr. Vaughan met with the Minister of

Oil of Libya, Mr. Fuad Kabazi, during Mr. Vaughan's visit to Libya in October, 1964."

The plaintiff rests, your Honor.

* * *

(2629) The Court: Well, Mr. Deer testified that with respect to costs in obtaining the concessions, the consent of Allen & Company was required.

Mr. VanVooris: Well, Mr. Deer's comment I heard from the stand. I am not sure that legally I entirely agree with Mr. Deer in just what he said on that. I think the upshot of it, the main point that he was driving at, I would probably not dispute, but the point that I am making is that also even if Allen & Company could not unreasonably have refused, the expenses had to be presented. The defendant is in no position to say, "We can monopolize this venture because you didn't pay what we never asked you to pay when it was part of the agreement that we should ask you to pay and would ask you to pay anything that was properly payable by you."

* * *

(2630) My associate points out that the July 16th letter, the so-called letter of cancellation, refers to "our agreements." In other words, why send it if it was just an agreement to agree?

The Court: That certainly misses the point. Even though your associate pointed it out to you, basically the contention is if there was an agreement it was unenforceable under law. That doesn't answer the question at all, it seems to me.

* * *

Colloquy

(2637) October 9, 1973, 10 A. M.

The Court: Good morning, all.

Gentlemen, before we go ahead, I have a question I would like to ask. At the start of the trial, with reference to the pre-trial order, items 1 through 25, 36 and 39 were stated as not in dispute and were read into the record.

As I read the pre-trial order, Items 26 through 35, 37 and 38 were also stipulated as not in dispute.

Is there any reason why the other items were not read into the record?

Mr. Nizer: None, your Honor.

The Court: I take it that since those items are not in dispute, the court has a right to accept the stipulation as contained in the pre-trial order?

Mr. Nizer: Right, sir.

The Court: What I am referring to is Item 3A of your pre-trial order reads, "The parties stipulated that the following facts are not in dispute in this action, each party reserving the right to object to the materiality (2638) of any certain stipulated fact and its relevancy to the issues," and I am directing myself particularly now to the items which were not read in at the start of the trial, that is, Items 26 through 35, 37 and 38.

Mr. Greenspoon: We may have objected to them on the ground of relevancy, I don't know.

Mr. Nizer: No.

Mr. Greenspoon: How do you know we didn't object to them on the ground of relevancy?

The Court: As long as we got onto this subject, if there is any objection on the ground of relevancy, counsel may state it now.

Item 27 refers to the public offering of the debenture issues as to which there was a great deal

of testimony. Why isn't that relevant, particularly on the issue of whether or not it contains an admission against interest?

Mr. Greenspoon: We have no objection to that item, your Honor.

The Court: How about the next item that we referred to, the prospectus? I take it that comes in the same category, where there was reference to the Libyan oil concessions on pages 23 and 24 of the prospectus, and as to which there was testimony?

(2639) Mr. Greenspoon: We have no objection to that item.

The Court: And I think there can't be any serious argument as to Item 29. That is the questionnaire which was the subject of so much testimony, particularly a part of the last witness, as well as the Allens, stating, "Neither we nor any of our directors, officers, partners have a material relationship with the company."

Can there be any doubt about that?

Mr. Greenspoon: No objection to that item.

The Court: And Item 30, plaintiff's counsel knew all of its affairs with Occidental, there is an asterisk there that an objection may be offered on the basis of the attorney-client relationship.

I would take it, in the light of the testimony of the two Allens, that they conferred with Mr. Deer and then revealing the subject of their discussion with Mr. Deer, particularly that he considered the letter of July 16th meaningless, that any claim of attorney-client relationship is out the window?

Mr. Greenspoon: With respect to that, certainly, your Honor.

The Court: Well, I am asking these questions because I was puzzled why there was no reference to them.

(2640) Number 31, I don't see there being any issue about that. That specifies who the officers were of Allen & Company, Incorporated.

32 I take it is not in dispute. I think both witnesses were questioned as to that, both the Allens, as to whether or not there was any subsequent change in the questionnaire.

33, in substance, that Allen & Company, Incorporated, did not file an amended questionnaire, and so forth.

Mr. Greenspoon: No objection to that one.

The Court: 34, do you have that in front of you?

Mr. Greenspoon: No, your Honor.

The Court: All these items were stipulated and I don't know why they were by-passed, 34 and 35.

Now, 37 and 38 I believe each witness, that is—I am not sure whether it was both the Allens, but at least one of them was questioned on the subject matter of both 37 and 38.

All right, proceed, please.

Mr. Nizer: Your Honor, even 39 and 40, just pursuing that, also have no objection to them.

Mr. Greenspoon: What are they? I don't have them in front of me?

Mr. Nizer: 39 states—

(2641) The Court: 39 was referred to at the start of the trial.

Mr. Nizer: 40 is also—I don't think there is an objection.

The Court: I don't know what that adds to the case. It is simply a statement that Mr. Haring filed a report with the court and Mr. Haring, as I understand it, is not available as a witness. I am certainly not going to take a report when I don't know its contents and where the witness is not subject to examination or cross examination. It

would simply be a paper or document and I don't know how anybody can argue about that since there is a controversy with respect to the exhibit, that is, the letter of February 16th, 1966.

What is your position about that? I don't know what is in the report. Do you think I should consider it?

Mr. Nizer: Oh, definitely. We filed a brief this morning on that very subject, your Honor, because it is coming up today.

The Court: Do the plaintiffs concede the conclusion reached by the expert?

Mr. Greenspoon: No, your Honor.

* * *

(2643) ORDWAY HILTON, called as a witness, having been duly sworn, testified as follows:

Direct Examination by Mr. Nizer:

Q. What is your occupation, Mr. Hilton? A. I am an examiner of questioned documents, which includes the examination of handwriting and typewriting, paper and inks.

Q. Do you have a laboratory? A. I do.

Q. Where is that? A. I have a laboratory here in my office in New York City, at 15 Park Row, and I have other laboratory facilities in my home in Morristown, New Jersey.

Q. How long have you been engaged in this profession, sir? A. For the last 35 years.

Q. Would you briefly state your experience and the posts you have held in connection with your professional work? A. Yes. When I first undertook this work I was (2644) appointed to the Chicago police crime laboratory

in Chicago, Illinois, where I received my basic training in the field of handwriting and typewriting identification and other document problems. This training was under the director of the laboratory and other staff members.

After approximately a year I was designated as the staff document examiner and handled all handwriting and typewriting problems in that laboratory at that time. My appointment originally was in 1938, and about three years later I was called to active duty under Naval Reserve commission by the U. S. Navy and assigned to Naval Intelligence duties in the 9th Naval District as a handwriting identification specialist, which actually included all phases of document examination.

I remained in these duties for the first two years of World War II and then was transferred to other duties in the Navy and for a period of the next approximately three years that I was on active duty, why, document examination problems were purely secondary duties, as far as I was concerned.

In 1946, when I was released from active duty, I came to New York City and became associated with (2645) Eldridge W. Stein, who had maintained a practice here in the city for a great number of years.

Q. In what capacity? A. He was an examiner of questioned documents and had this consulting practice that he and I joined together in. For the last five years of his active career, I was associated with him and we worked together on document problems and then when he retired in 1951, I carried on the practice alone, at the same address, and have maintained it since. Recently, within the last three years, I have been supplementing my staff by the training of an associate.

Q. What degrees do you hold? A. I am a graduate of Northwestern University in Evanston, Illinois. I received a Bachelor of Science degree in 1935 in the field of mathematics and physics. I was out of school a year

and then returned to the University and took a year's graduate work and received a Master of Arts degree in the spring of 1937.

Q. Are you the author of any books or articles in the field of questioned documents? A. Yes.

Q. What? Will you mention them briefly? A. Well, I am the author of a book published by Callahan & Company entitled "The Scientific Examination of (2646) Questioned Documents." This was published in 1956. I have published in technical and legal journals in the United States, Canada, England, France and Germany, over 65 articles dealing with various phasis of this work of questioned document examination.

Q. Will you mention a few of the legal periodicals in which your articles appeared? A. One is the American Bar Association Journal. I had an article some years ago in the Tulane Law Review. I have had articles appear in the Journal of Criminology and Police Sciences, which is a publication of Northwestern University Law School. It is a more technical journal but deals primarily with criminal law problems.

(2647) Q. Now, are you a member of any societies which membership is dedicated to questioned documents? A. Yes, two organizations. One, the American Society of Questioned Document Examiners of which I have been a member since 1944, and this is a group of consulting—well, not entirely consulting experts, but men who are active in the consulting field and also men active in Government laboratories now.

We have a membership of approximately 50 members. It is a highly selective organization. Then I have been—

Q. Did you ever hold office in that organization? A. Yes, I have held all of the offices including the presidency of the society.

Q. What others, please? A. And I have been a member and Fellow of the American Academy of Forensic

Sciences since the early 1950's. I have been a member of the questioned documents section and chairman of that section and active in its programs throughout the years. This Academy Association at the present time the membership numbers close to a thousand members that cover various disciplines in the field of technical identification as it pertains to legal problems, but the questioned documents section is made up (2648) of approximately 100 members that devote their full time to the type of work that I do.

Q. Have you ever presided over international conferences on questioned documents? A. Yes, I have. I was the presiding officer of the first international meeting on questioned document examination which was held in London in 1963. I was one of the co-convenors of that meeting, and then three years later, at the second meeting, I was the presiding officer in the Copenhagen meeting.

I have been active in the other two meetings in Toronto in '66 or rather in '69, and the one that was held last fall in Glasgow.

Q. Now, briefly, have you taught in this field, and if so, where, very briefly? A. Yes, I have. For a great number of years, since 1948, I believe it is, I have been lecturer each year at the short course for prosecuting attorneys, which is sponsored by Northwestern University School of Law, and lectured on questioned document examination. I have lectured at the Southern Police Institute on questioned document examination.

This is at the University of Louisville. And (2649) at special programs at Western Reserve University. And last summer, I taught a course, a seminar at Georgetown University in Washington, D. C. on typewriting identification.

Q. Now, a final question on this phase: Are you on the editorial staff of any publication that deals partic-

ularly with this professional work? A. Yes, I am. I am the Police Science editor of the Journal of Police Science and Administration. This is a new journal started in this year, an outgrowth of the Journal of Criminal Law, Criminology and Police Science. The Police Science Section is, and my work as editor is to handle technical articles dealing with laboratory methods both in questioned document examination and other fields of laboratory investigation dealing with criminal and legal presentations.

Q. Now, Mr. Hilton, did you at my request examine Plaintiff's Exhibit 159?

Mr. Nizer: May I have the original, please.

Mr. Lewis: You mean 158?

Mr. Nizer: No, 159. This is 158.

Will you please give me 159. I still think that is the original of this.

All right, then it is 158. 159 is the copy (2650) that was marked in evidence. May I have 158 again, please.

All right, I offer in evidence 158—no, no, I will withdraw it.

Q. I show you 159 which is a copy of the original of 158 for identification and ask you whether 158—I ask you to state whether 158 is the original that you examined rather than 159, a copy of the same document.

Mr. Nizer: May I call to your Honor's attention while the witness is examining it, that counsel by inadvertence marked the wrong exhibit. They marked a copy when we thought the original was being marked so that the copy is marked 159.

The Court: I want to be clear, is this the letter of February 16, 1966—

Mr. Nizer: Yes, your Honor.

The Court: —which Galic claims he received.

Mr. Nizer: He wrote—

The Court: That Galic claimed he received from Kabazi, that Kabazi testified that he wrote?

Mr. Nizer: Right. When counsel offered it in evidence, I think he marked a copy instead of the original. That results in my confusion.

The Court: For the purpose of the record, to (2651) make sure we are talking about the same exhibit, is this the original written copy that Kabazi said that he typed himself?

Mr. VanVoorhis: That is P158.

The Court: The carbon which he destroyed and the carbon copy of which he left in the file marked "special file."

Mr. Nizer: Yes.

Mr. Greenspoon: That is correct, your Honor.

The Court: Whatever its number, we are clear that this is the ribbon copy.

Mr. Nizer: 158.

The Court: Well, I don't know, you gentlemen have to agree on that.

Mr. VanVoorhis: Yes, that's right. 159 was the—

The Court: All right, in any event we are discussing the ribbon copy, and that is 158.

Mr. Nizer: 158.

Mr. VanVoorhis: Just to clear the thought on it, 159 was the copy which was received by the Allens.

The Court: Well, received by the Allens or by Mr. Holtzmann.

Mr. Greenspoon: No, no, your Honor. The (2652) reason that 159, that particular Xerox copy was offered, is that it is the one which was identified by Kabazi on his deposition.

Mr. VanVoorhis: Oh, yes.

Mr. Greenspoon: It is a European Xerox of some kind.

Mr. Nizer: Anyhow, whatever the reason, the original is 158 as your Honor described it.

The Court: I would assume that basically we are interested at this point in the original that I term ribbon copy and that is Plaintiff's Exhibit 158.

Mr. Nizer: Right.

Mr. VanVoorhis: Right.

Q. Now, what questions concerning this document were submitted to you? A. Well, I was asked to determine—

Q. This document being 158—

Mr. VanVoorhis: May we know at this point, your Honor, whether the questions were addressed orally or whether there is some letter or writing which poses the questions?

Mr. Nizer: You can cross examine if you wish. May I ask my question?

Mr. VanVoorhis: This is a preliminary.

(2653) The Court: I will allow him to answer.

A. I was asked to determine three things about this letter which is marked Exhibit P158 for identification.

I was asked to determine whether it was typewritten on an Olivetti typewriter. The second problem I was asked to determine were certain comparison specimens of official letterhead of the Kingdom of Libya, Ministry of Petroleum Affairs. I was asked to determine whether this paper of this letter was similar to and was of the same stock as other letters that were submitted to me, and finally, I was asked to determine the third problem and that was whether or not a carbon copy had been typewritten of this Kabazi letter of February 16, 1966, at the time that it was prepared.

Q. Now, restricting yourself for the moment to the first question which was posed, whether or not this Kabazi letter, P158, was typed on an Olivetti typewriter, could you tell us the procedure you followed in your investiga-

tion? A. Yes, I followed the usual practice in determining or answering such a question, and that is that first of all I turned to my reference material of typewriting specimens and information that I had in my own office, specimens of Olivetti typewriting that I had prepared myself (2654) and had obtained from other document examiners over the course of years, that dealt with—that were specimens typed on Olivetti typewriters, and I used those specimens as comparison to determine the similarity or differences in type design between the Olivetti typewriting and the typewriting of this letter.

I also employed the reference specimens that I have in my office that were compiled by Interpol, the international criminal police organization in their typewriter files a copy of which I purchased some time back, and then having made certain determinations as to the typewriting of this document, I not only compared this with Olivetti typewriting specimens, but with other specimens of European typewriting as well.

I then finally made a trip to Europe and visited the factories of the Olivetti Company in Crema, Italy, and consulted with their chief type designer, and consulted with his records to verify certain information that I had obtained from my file and to be sure that it was absolutely correct, and I also, on this same trip, visited the offices of Ransmayer-Rodrian typewriter manufacturing company in West Berlin. And I consulted with them and with their records concerning their type and type that they had (2655) furnished that would pertain to this letter to the Olivetti Corporation over the course of years.

Q. Now, as the result of this investigation did you form a professional opinion as to whether or not the Kabazi letter, P158, was typed on an Olivetti typewriter? A. I did.

Q. Can you state that opinion with a reasonable degree of scientific accuracy?

Mr. VanVoorhis: Your Honor, before the witness is permitted to express such an opinion, we submit that he should at least state for the record the factual data on which it is based.

The Court: He may state his opinion first—

Mr. VanVoorhis: Just a moment.

He has told us his procedure, including specimens, which he said of Olivetti typewriting that he had, and used for comparison Interpol specimens, information which he said he derived at Crema, Italy, and in West Berlin, but we not only do not have this data set forth, but we do not have the factual basis of the facts taken into account in the rendering of an opinion.

I realize that in these days there is a great deal of discretion in the trial Court with respect to (2656) permitting the expression of opinions and in relation to the method of procedure in the statement of factual data on which they are based. The old days of the strict hypothetical question are of course with us no more, although it is, I think, even as to a hypothetical question still in the discretion of the Court whether to require it.

But I believe that the cases and the authorities which have been written since these charges have come about all do call for a statement of facts on which an opinion is based.

Mr. Nizer: Your Honor, I simply want to say that he has a right to give his opinion on the testimony and the data that he has given and then he will state how he reached his conclusion.

The Court: I assume that is going to be the way the question will be put to the witness. I will allow him to state his opinion and thereafter he may state the basis on which he expressed his opinion, and that if Mr. Nizer does not inquire in this area as to the factual basis or other bases upon which

he came to his judgment, you may inquire. I don't think we have any problem. I really don't understand the objection.

Mr. VanVoorhis: Of course we don't know, (2657) for example, how much of this may be hearsay information.

The Court: You may question him about that.

A. I have reached an opinion—

Q. My question was, was the Kabazi letter—I beg your pardon.

The Court: Do you have an opinion that you can express with reasonable certainty?

The Witness: I do, sir.

Q. And was the Kabazi letter, 158, in your opinion typed on an Olivetti typewriter?

Mr. VanVoorhis: My objection was addressed to this question. I understood that he already had said that he had formed an opinion.

Q. What is your answer to my last question? A. It is my opinion that the Kabazi letter, Exhibit 158 was not typewritten on an Olivetti typewriter.

Q. Now, will you please give us the basis of that opinion.

You can address his Honor and explain what your basis for that opinion is.

Mr. Greenspoon: Could we ask Mr. Hilton to speak very slowly so we can grasp this as he goes along.

A. As I stated previously, I referred to typewriting specimens that were available to me in my own laboratory, (2658) and compared the typewriting of this letter with the standard Olivetti pica typewriting, because this is pica typewriting.

Q. Pica, p-i-c-a? A. Yes. Pica typewriting, because the letters on this particular machine spaced ten letters

to the inch. The design of type is different than the standard Olivetti type, and I know that—I knew previously from previous information, that the Olivetti typewriter company manufactures its own type. This type is manufactured or is designed in their Italian factories, and now at the present time in Crema, Italy, and the type on this letter differs in number of details from the Olivetti design of pica type.

I also examined this type further and compared it with other specimens of European type, particularly with type manufactured by the Ransmayer-Rodrian Company in West Berlin. This is a company that only manufactures type faces, they do not make machines themselves, but they sell this type rather widely throughout the world, and completely to European manufacturers. And in comparing the type with the specimens of Ransmayer-Rodrian I found that this type did in fact match the Ransmayer-Rodrian Pica Number 1 type. It matched it for the period of time of the (2659) design they were using for a period 1958 to 1964 and '65, and they have made slight changes in this type over the course of years.

Some of this information is available in published form in an article prepared by Dr. Crown of the Federal Government who made an extensive study of European type and its distinguishing qualities, but my comparison was made actually with actual specimens of typewriting from machines that I knew were equipped with the Ransmayer-Rodrian Pica Number 1 type.

I knew from various sources of information, the Interpol study, and also from Dr. Crown's published article, that Olivetti in Great Britain, their English company, used different type faces than they did in their machines that were manufactured in some of their other factories, their factories in Italy and Spain, for example.

And this was one of the factors that needed to be explored more fully to determine just how much variation might be expected. My comparison with specimens that

I had at hand indicated clearly that this type on the letter type by Mr. Kabazi was not like the type used in the Olivetti factory in Great Britain. There were differences in design of particularly the numeral 3, as it appears in the (2660) address of Allen & Company at 30 Broad Street, New York, as it is typed in this letter. The specimens I had showed a 3 very much like the 3 that the Olivetti Company has designed and used over the course of years with a round—rounded top on it, and this 3 has a flat top, a horizontal flat stroke, which is enough of a difference to distinguish between this type and the typed that I had available.

In consulting with the material that was available in Mr. Rolfo's office of the Olivetti Company in Crema, he is in charge of their type design department at the present time, I found that this type on this letter could not be—the data that I had in my own file was accurate that it could not be Olivetti type as it is manufactured in Italy, and used in most of their factories, and he verified the fact that until about 1939—1969—well after the date of this letter—the British Olivetti Company in their Glasgow factory had not used the Italian type that was manufactured in his plant, but had purchased type from other companies, one of the companies being the Ransmayer-Rodrian Company.

They purchased at different times from different companies. Setag was another company they bought from.

Mr. Van Voorhis: Do you mind if I ask to have (2661) that answer read again.

The Court: Yes, you may have it read.

(Answer read.)

A. The specimens of typewriting that he had from the Olivetti factory—

The Court: Pardon me, who is "he"?

A. He, Mr. Rolfo.

Q. What is his position again? A. He is the type designer, he is in charge of the type design section of their factory in Crema.

Q. And did he also make available to you the files and the specimens? A. Yes. Yes, he showed me specimens of British Olivetti type that he had available there, and the specimen that he did have available showed clearly a different design of 3. It showed also clearly that this was the Ransmayer-Rodrian type that had been put on this machine, except for this one particular numeral.

Before leaving him I asked that I have certain data that he had made available to me, or certain information that he had made available to me, confirmed by letter, and ultimately I did receive a letter from Mr. Rolfo setting forth in the letter certain facts and I have that letter with me, if it would interest the Court to see it.

(2662) Mr. Nizer: A copy of which we gave to counsel.

The Witness: Yes.

Q. All right, go ahead. A. I went from there to West Berlin where I consulted with Mr. Baruschke.

Q. Who was he? A. He is one of their chief men in their plant there. His title on the letterhead is in German and I am not able to read the German accurately, but I think it indicates that—suggests to me that he is in the purchasing end of it. He is very familiar with their type, and I understood that he was the son of the president of the company and has been with the company a number of years, and he also had Mr. Christ present, who had —who was the man who had handled the Olivetti orders by the British Olivetti Company, and they showed me their records that indicated—

Mr. VanVoorhis: Now, this we object to as hearsay.

Mr. Nizer: He looked at the specimens, your Honor, and we have authorities that an expert may testify to hearsay. It goes to weight.

The Court: It seems to me that an expert does (2662a) testify on hearsay, doesn't he, almost from beginning to end in reaching a judgment.

Overruled.

(2663) A. (Continuing) These gentlemen showed me their records that they had furnished during the period of time prior to 1966 and they had furnished type for the British Olivetti Company, their Pica #1 type, but their orders required that a special 3—they call it a Camillo, C-a-m-i-l-l-o 3 that is a round-top 3 was to be included with all these letters and this is what their records indicated they shipped.

I might show your Honor just a sketch of these two 3's so that it is clear just exactly what I am talking about.

Mr. VanVoorhis: May we see that paper, please?

Mr. Nizer: You have a copy of this. We gave it to you.

Mr. Greenspoon: No, you didn't.

The Witness: No, this is a sketch I made from type designs. It is similar to the one that—the standard Rodrian numeral 3, which appears in "30 Broad Street" in the Kabazi letter and is a flat-top 3 that has a horizontal stroke on it and the diagonal down stroke and then the rounded lower portion.

The Olivetti style 3 has a rounded top portion and a rounded lower portion and it has an entirely different top on it, and the type that was furnished by Ransmayer to (2664) the Olivetti Company copied this 3 quite accurately.

The Court: Copied which 3?

The Witness: The Olivetti 3, the round-top 3. This was the 3 furnished to the Olivetti Company in Great Britain.

As a result of this information, this verified information that I have in my files, that the Olivetti specimens

that came out of their English factory did in fact contain their typical 3, although some of the other numbers not exactly like theirs, but the 3 was—it was a different 3 than we found in the Kabazi letter.

I verified that they had used the Ransmayer number 1 Pica type that appeared in this letter, though we used it with a special 3 and therefore this letter could not have been typed on an Olivetti typewriter manufactured in Great Britain. It certainly could not have been typed on an Olivetti typewriter manufactured in Italy, because not only is the 3 different, but several of the other letters differ in small details and this same design of type is used in other factories of theirs throughout the world, especially their Barcelona factory, which manufactures a number of machines distributed in the European area.

It is the combination of all of these factors (2665) that led me to the opinion that the Kabazi letter could not have been typed on an Olivetti, but I found one other bit of information that would rule out this letter as being typed on an English Olivetti, and that is the line spacing on it.

The manual that was exhibited to me in Mr. Rolfo's office as to line spacing indicates that the English company uses a different line spacing than they do in the European factories, or in their South American factories, and that is that it is what they technically call an English Ruys, R-u-y-s, spacing. It spaces like our American machines do, with a single space, a double space and a triple space and—

> Mr. VanVoorhis: I wonder—I have lost the thread a little about just which kind the witness is talking about.

The Witness: I am talking about the English spacing. It spaces one unit—

Mr. VanVoorhis: The English Ruys?

The Witness: Yes, which is what they use on the English machines. It spaces one, single space, double or triple spacing. These are measured in the metric equivalents of one-sixth of an inch, the same as American typewriters are spaced one-sixth of an inch, or that is (2666) the way the Pica machines have been spaced over the course of years.

This is typical of the American manufacturers as well and is the manner in which machines are spaced that come out of the Olivetti factory here in the United States.

In Europe they use what I would describe as a half-spacing ratchet. I say that because its pace is one full space and then it spaces what is the equivalent of a space and a half—in other words, the second position on a carriage return ratchet allows to space not one-sixth of an inch, which would be—but a quarter of an inch, which would be one and a half six or three-twelfths of an inch. Then it spaces double space and two and a half spaces, on that ratchet.

This particular letter has the half-spacing ratchet on it—

Q. That is, P158? A. Yes, the Kabazi letter. And Mr. Kabazi typed this letter throughout with the ratchet set at one and a half spaces, that is, so that the lines are approximately one-quarter of an inch apart. They actually measure a little bit less than that because of the peculiarity of the machine he was using, but basically this is built (2667) on the one and a half space ratchet.

So that this is a further reason why this machine did not originate in the English factory of Olivetti, because there they use one, two and three spacing and they don't have the half space gears on the ratchet that would allow for this kind of spacing throughout the letter.

Q. First, did Ransmayer also confirm in writing the data? A. Yes, I have that letter with me too, Mr. Nizer. I asked both of these companies to send me a letter con-

cerning the various facts demonstrated to me and described to me.

Q. How many, if you know, factories manufacture the Olivetti type? In other words, how many Olivetti factories manufacture Olivetti type, would you say, approximately, or do you know precisely? A. Well, the Olivetti type is manufactured—a great deal of it is manufactured in the Crema factory and shipped to their various factories throughout the world.

However, factories such as the Barcelona factory, in Spain, has always manufactured type but they use the same masters of design as the Italian factory (2668) does.

The American factory, now, in Harrisburg, which is the newest of the Olivetti factories, manufactures type here in the United States but the designs are drawn in Italy and, in fact, all of the designs now emanate from the Italian factory, but back in this period of time, why, except for England, the other factories were using the standard Olivetti type, and of course that was not true at that time about the American factory, which was then the old Underwood factory that Olivetti had purchased and they were using a different form of type, they were using a Pica type that had been carried over from the Underwood manufacturing days.

Q. Well, whether it was shipped mostly from the Crema factory in Italy or manufactured by themselves as Olivetti type, how many Italian Olivetti companies throughout the world were using Olivetti type, as you described it? A. Well, there were factories in South Africa, and South America and Mexico that were all using this type, besides the European factories. There are several factories in Italy that manufactured typewriting parts or assembled machines, but then there is the Spanish factory that actually builds machines as well.

(2669) Q. So you have mentioned, as I follow you, about eight or nine factories of Olivetti all using Olivetti type, whatever the source, right? A. Yes.

Q. Why then, to make it clear, please, to his Honor, did you concentrate on what you called the Olivetti factory in England, you said in Glasgow, Scotland? A. Because this was the exceptional factory, Mr. Nizer. The British Olivetti Company was working differently than their other factories and they were purchasing their own type and they were not importing it from Italy, they were purchasing on the continent from European type face manufacturers. I don't know why, but this was the practice.

Q. And that is the reason you undertook this visit and research, I take it from your testimony, to determine whether since they were buying plain type from other sources whether that type matched the Kabazi letter, P158? A. That is correct.

Q. Was that your purpose? A. That is correct.

Q. And you have told us, illustrating with the 3, that you came to what conclusion as to the English (2670) factory? A. That the English factory did not manufacture a machine with the exact type of type that appears in the Kabazi letter, Exhibit P158.

Q. So that, as I follow you, then, having eliminated the one exception where an Olivetti factory didn't use Olivetti type, you came to the conclusion you stated with respect to the Kabazi letter not having been typed on an Olivetti? Is that a fair statement of it, as I follow you? A. Yes.

Q. And that, combined with the type study, without repeating, and also the spacing study? A. That's correct, yes.

Q. Confine yourself now to the second inquiry, the inquiry, the investigation of the paper employed in the original of the Kabazi letter, 158, and tell us what tests you made and what comparison papers you used so that I can offer in evidence the comparison letters. Please identify what you compared it with and what you did. A. Well, I asked for the paper and the printing of this

letterhead on Exhibit P158, the Kabazi letter, and I was furnished with samples of the official letterhead—actually, the only sample that was of comparable (2671) size was a letter written in Arabic, which is dated in July, 1966, July 11, 1966, which contains the same letterhead, that is, the same subject matter in the letterhead, and is of comparable size of the letterhead to the Kabazi letter, and I made a detailed comparison between these two specimens.

Mr. Nizer: Before you tell us about that, the second letter, which was marked Defendant's Exhibit 12 on the examination of Mr. and Mrs. Teitel, the experts for the plaintiff, and which was marked as K-2 when it was submitted to Mr. Haring for his analysis, is a letter dated July 11, 1966, on the letterhead of also the Kingdom of Lybia. I now offer in evidence for comparison purposes.

Mr. Greenspoon: No objection.

Mr. VanVoorhis: The only question, your Honor, is with respect to where and how it was obtained with respect to the authenticity of this so-called control letter.

The Court: I don't understand. Are you taking a position different from Mr. Greenspoon now? Mr. Greenspoon said he did not object.

Mr. Greenspoon: We know where it came from, your Honor.

(2672) The Court: All right.

Mr. VanVoorhis: All right, so long as that will ultimately be established.

(Defendant's Exhibit D86 received in evidence.)

Mr. Greenspoon: That is dated July 11, 1966, isn't it?

The Witness: July 11, 1966.

Mr. Greenspoon: And written in Arabic?

The Witness: Yes.

By Mr. Nizer:

Q. Now, sir, will you please tell us what tests you employed in examining these two documents to make your determination? A. Yes. I wonder if I could have the exhibit back?

(Document handed to the witness.)

Q. Just the number of it. A. D86.

Q. All right. A. In examining these specimens of paper and letterhead, I made an examination of the dimensions of the paper and of the manner in which the letterhead was printed and also, in examining the paper, I made such other standard nondestructive tests as examining it with light coming through the paper and comparing the color and the surface finish (2673) of the paper of these two specimens to determine the various factors that might be pertinent to whether they came out of the same batch or the same stock of paper. Some of these tests were aided, of course, by microscopic examination, but most of them were pure visual tests, with some aid of hand magnifiers.

Q. As a result of this investigation, did you reach a conclusion and opinion as to whether or not the paper in the original Kabazi letter, Exhibit 158, of February 16, 1966, was typed on the same lot of paper as the comparison document, D86, dated July 11, 1966? And my question is, did you reach an opinion? A. I did.

Q. Can you state with reasonable accuracy what that opinion is? A. Yes.

Q. What is it? A. It is my opinion that the Kabazi letter, P158, was typewritten on different paper than the letter of July 11, 1966, Exhibit D86.

Q. Before asking you to state to his Honor the basis of your opinion, did you make a photograph of overlay of one document, namely, Exhibit 158, over and on top of D86? A. I did.

(2674) Q. I show you this photograph and ask you whether this is the photograph you made for purposes of comparison. A. It is.

Mr. VanVoorhis: May we see it, please?

Mr. Nizer: I offer that in evidence.

(Pause)

Mr. Greenspoon: We have no objection. We would just to have a copy.

(Defendant's Exhibit D87 received in evidence.)

Q. Now, will you explain to his Honor the basis of your opinion, and you can refer to D87 or any other test that you made. A. Exhibit D87 I think shows the pertinent information that was derived from this study. First of all, it shows the comparison of the width of the paper, which is slightly different between the Kabazi letter, P158, and the July letter, D86. D86 is the top—that is, the top portion of it appears in the photograph, and the Kabazi letter, as can be seen from the typewriting, appears below it. Aligning the left edges virtually together, there is a slight difference in the right edge measurement and that is only very slight, but it shows to me clearly that these two sheets of paper were not cut simultaneously, they were not cut at the same time, but the cutting machine had been reset between (2675) the cuttings of the two papers, indicating that they came from different batches of paper. There is some very slight difference in the color of the paper, further indicating a difference in the stock, paper stock.

There is also evidence shown in this photograph—it shows more clearly where—that the letterhead itself was printed at two different times. In other words, the printer in setting up the type prepared two slugs of type on the English printing on the left-hand side. The line "Kingdom of Libya" representing one—what I would de-

scribe in printers' terms as one slug of type, and the Ministry of Petroleum Affairs which appears below it, as a second.

When that was set for printing the Kabazi letterhead, the alignment of "The Kingdom of Libya" was so that the left edge of it came immediately above the n of "Ministry."

The alignment of that same portion of the letterhead in the July letterhead was offset farther to the right, so that the k in the top portion of this photograph, you will see, lines over the s of "Ministry," the [illegible] letter beyond the—well, two letters beyond the [illegible]inistry." In other words, the upper slug is set [illegible] the right in the printing of the letterhead in J[illegible]a. it was in the Kabazi letter.

(2676) There is a slight difference in the printing of the design of crest in the center. The clarity of the crest is much greater in the Kabazi letter than it is in letterhead of July, 1966, Exhibit D86, and actually the Arabic writing on the right side, there is a slight difference in that as well. Aligning along the right edge, where the Arabic writing starts, in the Kabazi letter the upper and lower lines are set with the same right margin, but in Exhibit D86, the July letter, the Arabic writing on the first line is offset slightly farther to the left, the edge of it comes between the first two characters of the small Arabic writing on the line below rather than being absolutely flush with the right edge of that line.

Q. May I interrupt simply to be sure this is clear. The last letter in the Arabic is a perpendicular line and, for this purpose, let's call it something like an L. A. Yes.

Q. You say that the L in P158 is directly above the lower smaller letter in Arabic in P158, whereas you say, if I understand you, that that L, as I call it, that perpendicular line, is more over the second letter from the right in D86, is that right? A. Yes.

Q. Is that what you are telling us? (2677) A. Yes. In other words, all three portions of the letterhead, the three separate units of the letterhead, the English printing, the crest and the Arabic printing are in slightly different positions, showing that the two letterheads were printed at two different runs by the printer and were not printed in the same printing process. Besides that, there is the difference in the paper itself, indicating that these two documents, P158 and D86, were actually typewritten on different paper.

Q. By different paper, you don't mean just a different sheet, but different stock? A. Yes, different stock, and a different printing.

Q. Let me take you back to the crest for a moment, and particularly—well, in view of his Honor's ruling, I won't refer to the Haring report at present, but look at the crest itself. Do you find entirely apart from the darkness or lightness of the ink, a different design itself in the center of the crest? A. Yes, in the center of the crest, and there is a slight difference in the shape of that center portion, with the dot over that curved stroke not exactly the same distance—in fact, they are not exactly of the same size and intensity. There are some differences in the right side of the crest between the two specimens as well.

(2678) Q. Now I come to your third question that was submitted to you, namely, to determine whether or not a carbon copy of P158 was simultaneously made of that letter as it was being typed. Tell us what you examined with respect to that problem. A. Well, in respect to this problem of determining whether a carbon copy was made at the same time as the letter was typewritten, I examined the document very carefully under magnification and under controlled lighting conditions, using the binocular microscope a great deal. I examined it with the use of infra-

red viewing equipment, ultraviolet radiation. I made photographs of the documents, and particularly photographs using infrared sensitive materials, and a technique known as infrared luminescence, which I will describe more completely in the course of my further testimony. These various tests, all of which were carried out, were carried out in such a way as to not harm or damage or change the document in any way whatsoever. None of the tests were at all destructive and these tests enabled me to study the fine details of certain aspects of this document that would be pertinent to determining whether or not a carbon copy had been made.

Q. Did you examine both the front and rear of the letter? (2679) A. Oh, yes.

Q. D158? A. Yes.

Q. And pursuant to an order of the court, were you prohibited by me from making any chemical tests or analyses? A. Yes.

Q. Did you also examine other original Libyan documents, front and rear, in the course of your study? A. Yes. In the course of my study I was supplied with a series of documents, official documents in the Arabic language. That is the way these were described to me, that it originated in the Ministry of Petroleum Affairs, and I examined these documents in the same manner and I also prepared a series of controlled specimens that is, typings in which I endeavored to duplicate the various possible conditions under which the Kabazi letter would have been typewritten with and without a carbon copy and with various types of carbon paper.

Mr. VanVoorhis: We would ask that these be identified, your Honor.

Mr. Nizer: You mean the specimens—

Mr. VanVoorhis: The specimens which he said he examined.

The Court: Yes.

(2680) Mr. Nizer: They were all delivered, copies of them, to Mr. Greenspoon. You have them.

Mr. Greenspoon: We do not have them. We were required to return them.

Mr. Nizer: Oh, I beg your pardon. When I said copies, we gave you the originals, which you returned?

Mr. Greenspoon: You gave me the originals for delivery to Mr. and Mrs. Teitel, and we returned them.

Mr. VanVoorhis: We would like to know definitely what it is the witness refers to.

Q. Will you take a look at the papers I hand you and I ask you if these are some, if not all—I am not sure at the moment—if these are the documents which you used for comparison purposes? A. Among the comparison documents I used is a document now in evidence as D86, and I also examined a series of these Arabic documents and this particular one I have before me now contains a pencil notation at the top of K3 in very light pencil.

Another one that I examined was K7, marked at the top. It has a date stamp of 9 October, I believe, 1966—

Q. That's right. A. The type is blurred.

I examined another document, which is marked in (2681) pencil K14. It has a "Received" stamp of May 16, 1967, Occidental of Libya, Incorporated.

I examined a document that is marked K9 in pencil. It has a pencil notation at the top of June 1, 1967, and a purple stamp down at the bottom which apparently is a stamp of some Libyan official. It has the Libyan crest on it.

I have a document, K10, which was received on July 27, 1967, and a document—

Q. Is it July or June, on the last one? A. It is June. I am sorry.

Q. June 27, 1967? A. That's correct. And a document which bears the notation K11, as I read it, July 4, 1967. This too has a purple stamp on it.

There are some others here—well, I had available to me, but I didn't use, this document which is marked "Draft No. 1" which is a carbon copy.

Q. If you didn't use it, it doesn't matter. What else? A. I did not use a document here marked K8. Nor did I use either of these documents that have both English and Arabic typing on them, because—I didn't use either one of those.

Q. Is there any reason why you didn't use them? A. Well, I believe these are completely duplicated (2681a) documents. They may have a little bit of original typewriting on them, they have some original ink writing, but primarily they are mimeographed documents or duplicated in some form or other.

(2682) Q. I see. They are not originals, in other words? A. That's correct, yes.

Q. All right, now the others that you specified, were originals? A. Yes.

Q. Now, based on your investigation, did you form an opinion as to whether or not a carbon copy was made of the Kabazi letter simultaneously with its typing? A. I did.

Q. Can you state that opinion with a reasonable degree of certainty?

Mr. VanVoorhis: Same objection as before.

The Court: I don't understand that, really I don't. What is the objection? To his expressing an opinion as an expert?

Mr. VanVoorhis: Simply with respect to a statement of the facts disclosed.

The Court: The witness has just been asked to express his opinion as an expert, and with due respect, you are objecting and I am asking for the basis of your objection.

Mr. VanVoorhis: All right. As I understood the—

(2683) The Court: Judge VanVoorhis, will you please state the basis of your objection—

Mr. VanVoorhis: The basis of my objection is—

The Court: To the question that was put to the witness.

Mr. VanVoorhis: —that I ask the Court to call upon the witness to state the factual basis for his opinion before he expresses it.

The Court: He may do so after he expresses the opinion.

Mr. VanVoorhis: I accept your Honor's ruling, yes.

The Court: We will take our mid-morning recess. In the discussion the witness did not give the answer.

Will you please give your answer to the question?

A. I believe the question was whether I can express an opinion—

The Court: With a reasonable degree of certainty—whether a carbon was made—

A. Then I can.

The Court: —at the time of the original typing of the letter.

A. Yes, and I can express such an opinion.

Mr. Nizer: And we shall take the recess?

(2684) The Court: He can express it.

Q. What is your opinion? A. It is my opinion that no carbon copy was typewritten simultaneously with the Kabazi letter, and this is based upon the preponderance of physical evidence found within the document.

The Court: We will take our recess.

(Recess.)

Q. Mr. Hilton, going back for just one question to the typewriter testimony which I overlooked to ask you, what is the name of the Swiss make of typewriter? A. Hermes is the most common.

Q. Have you any opinion as to whether the Kabazi letter was written on a Hermes typewriter? A. I do.

Q. What is it? A. It is my opinion that this letter was not typewritten on a Hermes typewriter.

Q. Can you give the basis for that very briefly? A. Well, briefly, the usual type design that Hermes has used for a number of years is not the Ransmayer-Rodrian type, it is a different design of type, but more important than that is that the Hermes have used a different letter spacing or the technical term is escapement, so (2685) that the letters do not space exactly one-tenth of an inch but space in a slightly narrower spacing than that at 2.50 millimeters rather than the 2.54, I should say centimeters 2.54. Well, the individual letter spacing is millimeters.

Q. Well, coming back to the point at which the recess was taken, you had just testified that in your opinion a carbon copy was not made of the Kabazi letter, and I asked what is the basis of your opinion. Will you please describe it to his Honor? A. Well, the basis of my opinion that the Kabazi letter was not typewritten, that a carbon copy was not made at the time it was typewritten, is based

upon a detailed and microscopic study of the typing of this letter, both the front and the back of the document.

There are two factors that needed to be considered in detail here. This typewriting of this letter, which is prepared on a very thin and not very good quality paper—

Q. Is that Exhibit 158? A. 158, yes, the Kabazi letter.

Q. Yes, go ahead. A. It is on a very thin, light-weight paper, and (2686) the quality of the paper is not as good as some that we have in this country. Consequently the typewriter in, as it typed the letter, caused the type faces perforated or broke the paper surface at a number of points. There are—some of these fractures occur in—in rather hairline fractures but there are 9 points of punctuation here, periods and commas, in which a small hole has been made in the center of the round portion of the letter, and you can actually see light through the paper when you hold it up to the light.

Now, this was one of the factors that needed to be considered, because of itself it doesn't prove a carbon copy or not a carbon copy, but what happens around those holes is important and this was one study that I made.

Another factor that was discovered in the examination of the back of this document is that there is a completely or more concentrated on the right side of the document than there is on the left side, but still quite plentiful, a number of very small microscopic flecks that are of a light blue color or of a bluish color.

These flecks occur along the back side of the document and these had to be studied in detail to determine whether or not they could have originated from anything that was related to a carbon, the materials that would be (2687) used in making a carbon copy.

Neither factor by itself establishes a carbon copy, but as I say, the elements of them do establish in my opinion,

after they are carefully studied, that no carbon copy was made.

I examined, for example, the various points of punctuation in this letter. There are—there were 29 of them that I examined where some fracturing had occurred. In a great number of these, about 20 of them, the fracturing was only of a hairline nature, that is, that under the microscope you could see some slight breaking of the paper, but it wasn't pronounced, but in nine cases, beginning with a period after Mr. in the inside address of Mr. Ferdinand Galic, and running through a number of the periods and commas throughout the letter, there are small round holes.

I examined these holes front and back under the microscope, and the evidence that was disclosed to me by microscopic study was all pointed in the same direction, when there was anything conclusive about it, it indicated that there was no carbon copy made.

Some of them were rather neutral, but there were several of these that contained clear evidence that there was no carbon copy and in fact all of them [illegible]ally (2688) contained some evidence that no carbon copy. I examined them from the back side as well as the front side, and if this document is examined from the back side, around the typewriting under good light, you find a number of small bits of black ink there.

This is the ink that has been driven through the paper by the typewriter as it typed the letter, and in some cases it also undoubtedly has migrated a little bit or soaked into the paper, because typewriting ink, when it is first typed, has an oil solvent in it that causes it to penetrate the paper fibers and soak into the paper a slight bit, not very much but some. So that with this thin paper, why, there is some slight tendency to do that even where there wasn't a break that the black can be seen very clearly on the back side of the document.

In examining these holes I found in the instance of three of them around the edge of the hole some area in which the ink of the typewriting ribbon had not completely stained the edge of the hole.

In other words, there are white, small microscopic white gaps where there is a place where the ink as the type drove through the paper did not go—stain the hole edge. (2689) This is a condition that I found occurred from time to time in control specimens that were typed with no carbon copy, when a backing sheet was used or when no backing sheet was used, and you could cause a fracture of the paper that you could find an occasional example of this white rim around there, or portions of the rim being white or very light gray color with very little ink or no ink on it.

These are just small microscopic gaps. I did not find this occurring in any instances of documents that I have examined over the course of the years or in connection with this case or any of the control specimens that I prepared with carbon copies, I didn't find these white gaps occurring. They occur in the—in the comma after—now let me refresh my recollection as to which one of these commas it is related. "Therefore." The one following "therefore" in the second paragraph, the fifth line "I wish, therefore," and it is that comma that has a decided break in, and I made an enlarged photograph of that particular break because it is the most prominent of all.

There were also two of the periods that had similar small breaks in them, but in the case of this comma there is a decided small area near the lower part of the (2690) hole that is unstained, and in my opinion this is evidence that the—

Mr. VanVoorhis: May we see the picture, please?

The Court: Let him finish his answer. This is evidence of what?

The Witness: This is evidence that no carbon copy was made.

The Court: Finish your answer.

All through this trial, I have actually at my own request only had a copy of Plaintiff's Exhibit 159 before me, P158—the one I have is P159. I haven't at any time had the original. May I see the original, P153. The clerk quite correctly calls my attention to the fact that we have not received in evidence P158, but I take it there is no objection to my examining it even though it is not in evidence.

Mr. VanVoorhis: We offer it.

Mr. Greenspoon: We will offer it.

The Court: I understand you have, but Mr. Nizer has been objecting all along.

Mr. Nizer: Yes, subject to the same reservations we have made, that is correct. To 159. This is 158.

(2691) Indeed, I thought it was the original that was marked at that time when I made my objection.

The Court: All right.

Now, am I correct in my recollection that one of the Allens testified that he had received a copy of what is now referred to as P158, but doesn't recall whether or not it came with a covering letter? Is that right?

Mr. Greenspoon: Yes, your Honor.

Mr. VanVoorhis: I think that is right.

The Court: Also, did Mr. Deer, during the course of Mr. Deer's testimony, was there a further reference to a copy of this letter having been mailed to Mr. Holtzmann?

Mr. Greenspoon: In Mr. Deer's cross examination and direct, he testified that he had seen a copy of this letter some time between October 1966 and while he was doing his review, perhaps January of '67, in that period of time.

The Court: Then I am mistaken that there was some reference to a copy of the letter having been received by Mr. Holtzmann?

Mr. Greenspoon: There is no testimony that Mr. Holtzmann received a copy.

The Court: I didn't say testimony, I said there was a reference.

(2692) Mr. Greenspoon: There was a reference by Mr. Galic that he had mailed a copy of this document to the Holtzmann firm.

Mr. Nizer: There was something else. Your Honor's recollection is right. There was a reference to it on the Deer cross examination that he knew that his partner, Mr. Holtzmann, had stated in his deposition that he never saw it until '67—April '67, the spring of '67. The reference is a page—and he said that that was correct, and he so understood that he had so testified.

The Court: I think that is what I am referring to. It came up during the course of Mr. Deer's examination. There was some reference to Mr. Holtzmann and the letter in question having been either seen or seen by him. That is what the testimony indicates.

Mr. Nizer: It is around Page 2552 of the record, your Honor. Your Honor's recollection is correct.

The Court: All right. We will proceed with the examination of the witness, please.

A. (continuing) Further in examining the other breaks microscopically, the ones where the paper has actually been penetrated and there is a hole, I found along the edges of these holes just a uniform coloring, no increase (2693) or more intense coloring along any portions of the edge that would be due to carbon paper having been pulled against that edge of the paper.

Now, when I refer to the carbon paper being pulled through the edge of the paper, there is the action that as the type strikes the paper and penetrates the hole, it then strikes, having penetrated this paper, strikes the back of the carbon paper itself which has a coating of paper on the back side to keep it from offsetting onto the letter itself, and at times it will even fracture that backing paper, which is very thin on the carbon paper and will penetrate down to the ink portion of the carbon paper which is a waxy-type of ink, generally black, but sometimes other colors, and as it comes back through the hole it has a tendency to lift some of this carbon up and normally you find some staining in addition to the ribbon, to the ink going through the ribbon, or the ink from the ribbon where the type struck the hole, so that you have the combination of the two and very often you find little black, very intense black edges around a portion of the hole.

Now, if we were dealing with only one or two holes and we didn't find this, this would be—this (2694) might be explained by the fact that it just didn't react that way on this particular hole, but in this document that we have before us, we are dealing with nine different holes and the probability gets extremely remote that there is any chance of some one of these holes or several of these holes not reacting in this way so that there is any stain from the carbon.

There definitely was no staining from the carbon in the clear holes where there is clear gaps and in these other holes that are rather uniformly marked around the edge, there is no intensification due to carbon.

These factors, and as I examine the back of the document, this would be confirmed too because in most of these holes, the carbon or the black ink around the edge of the hole is not entirely complete all the way around the hole. There are places around the hole on the back side where no ink has been driven through from the front

side, nor is there any staining from any additional staining where this hole, which is bent downward. and would bring it even closer to the carbon paper, no staining from any break in the carbon paper itself, which should have occurred with these very pronounced holes.

The fact of the matter is in examining carbon (2695) papers in which carbon copies were made, I found this intensification around even hairline breaks in a number of instances, and in larger holes like this, it occurs quite—it occurs frequently, not all the way around the hole but in edges I found none of that here and that is a further reason why I state there is no carbon copy made.

The Court: Am I correct in my understanding then that whatever stains there are, we shall refer to them as stains, you say are attributable to the ribbon and not to a carbon paper?

The Witness: That is correct, yes. And there is no doubling up of stains or more extensive stains.

The Court: It could account for both ribbon and carbon?

The Witness: Yes.

The Court: You eliminate carbon entirely?

The Witness: Yes, carbon from carbon paper.

Now, in examining these various documents, these Arabic documents, I found that in the—in penetrations through these documents, there are a few that I could find that intensification and I wanted to examine the Arabic documents because I was not sure whether the samples of typewriting of carbon paper that I had available, which were American brands and European brands, whether these (2697) would thoroughly account for the action which you might get with carbon paper that was used in Libya, not knowing who was the manufacturer of it or where it was manufactured, but I found that conditions were comparable in these Libyan documents to what I had found in other documents over the course

of years as I examined for carbon copies, and in the test material that I put together.

I also examined this paper around these holes to be sure that there was no discoloration of any other color material because there would be no way of knowing from examining the document by itself, without seeing a carbon copy, what color the carbon paper was. Most carbon paper is black, but there are a number of other different colors, red, blue, and purple, and so consequently, I examined very carefully around these holes to see whether there was any other color, and especially in view of the blue flecks that I found on the back of the carbon—of this sheet that I will talk about in a moment, I examined to see whether any of these had been pulled through the holes, and I could find no evidence under the microscope of any blue flecks appearing on the face of the document.

And I verified that by another test that I will describe subsequently.

(2697) So that all of the evidence, not only the large fractures and the hairline fractures, where I found that you could see fine white edges at times or light-colored edges where the hairline was broken and where there was no staining which would be less important but nevertheless of some importance because we have approximately 20 of those on punctuation marks, in addition to the nine holes, I found no evidence in any of these of any carbon resulting from carbon paper, that the only staining of these breaks could be accounted for by the ribbon that was used to type the original copy of the letter.

As I stated, you can get holes like these when a specimen of typewriting, a sheet of typewriting of this quality is placed in the typewriter with no backing sheet at all, just a single sheet like this, around the roller, and the typing with sharp type as we have in this Ransmayer-Rodrian type, penetrating the paper from time to time and breaking the paper without any backing material behind it or any carbon copy.

You can also get it and it would be a little more frequent if there was a sheet of plain paper or any kind of paper put behind without a sheet of carbon paper, just a backing sheet which many typists use, many typists (2698) invariably, particularly on thin paper insert a second sheet of paper behind it, they use it as a backing sheet, and this would increase the chances of getting fractures.

Now, preparing specimens with both those techniques I found some microscopic black stains on the back similar to what we have around the edges of these holes that can be attributed to the—and would have to in those conditions be attributed to the ribbon of the typewriter, and this ink being driven through in the fracturing of the paper, or the last bit of it actually flowing slightly as it penetrates into the fibers.

And these are raw fibers and would absorb this ink more readily than maybe the finished surface of the paper.

So that all of these tests so far as the fractures are concerned all add up to the same thing in my opinion, that no carbon copy was made.

Now, the second unusual thing about this document, and it is extremely unusual to find the number of small microscopic colored flecks that we have on the back of this document, little—very small light blue flecks that occur, a great number of times on the document, throughout the overall back of it, but they seem to be more concentrated along the right half, as I examined them, and (2699) without making any fleck by fleck check I found that there was a greater concentration along the right side of the document as we look at it from the back.

These blue flecks I am unable to say what they came from, but I made a careful examination, detailed examination to see whether they could have any relationship to a sheet of carbon paper. As I described a few moments ago, a sheet of carbon paper consists of a very thin

layer of paper on the back side, this is typewriting carbon paper, and on the front side of that is rolled on, coated on, a wax-like inking material that is compounded in a number of different ways, but basically it is—it dries and hardens with a smooth surface so that as you rub your finger over it you can't rub off very much coloring.

But as the type strikes against the back of the paper, through the original sheet, as the force strikes there, some of this ink on the carbon paper is pressed onto the second sheet behind it that makes the carbon copy.

There is this thin layer of paper between the carbon ink on the carbon paper, the wax-like ink, and the sheet above, and this being a thin paper is subject to some damage by the force of the type and the carbon paper will wear out in time. Not only will the carbon (2700) be exhausted on the front but there can become fractures of this paper behind.

Now, the paper comes in a great number of colors. Some of these are printed. Very often the company that manufactured the carbon paper prints a trade name on it, some design, it may be several colors, it might be a solid color, but—and there are different types of backing material, some are glossy and some are not glossy, they are smooth.

The process of printing anything on that paper is done before the wax is put on, but otherwise used would have the problem of damaging the carbon coating that is going to be used for manufacturing carbon copies, so the back is already printed.

It is printed with printers ink, and printers ink as we know with magazine or book printing, that this ink penetrates into the paper, it dries hard, and it doesn't come off very easily.

So that if these blue flecks came from a sheet behind the document, they would have to have been bonded rather weakly, not as much as blueprinting on the back of the sheet of carbon paper, which is bonded quite

tightly, but more like chalk or pencil, something of that nature, that is on the surface of the paper.

(2701) Now, it is possible that as the sheet gets worn that some of this paper might actually chip away, but the quantity of small flecks we have here and the appearance of them under the microscope does not suggest that we are dealing with small fragments of paper from the back of carbon paper.

I couldn't find any evidence of this. I did find the blue flecks and I examined them very carefully, and I examined them with the idea of finding out whether they had any relation to a sheet of carbon paper.

Now, there are on this paper—and I would describe them as being face down against the paper—by that I mean that whatever surface they were on before they were transferred to this paper, the top layer was right against the paper of the Kabazi letter, Exhibit 158, and as they are pressed on there by whatever process caused the pressing on, what was the top layer is now bonded against the Kabazi letter, and what we see is really the back side of them.

Now if they came from carbon paper this back side would be against the carbon of the carbon paper. Consequently I examined these flecks under various techniques to see whether anything would show that would tend to (2702) relate them to carbon paper, whether I understood the microscope, I could see anything the looked like little particles of carbon paper. I didn't find that. I didn't find that these flecks seemed to be carbon themselves.

I made a series of tests and determined that they weren't—the marking material from carbon paper.

Well, among these tests, one of the things that I did in the early part of the examination was to examine these blue flects under ultra violet radiation and I did this and ultra violet radiation is a form of light radiation that most of it is in the invisible spectrum beyond the blue end of the rainbow, it can't be seen by the human

eye, and it does have the effect of reacting with certain materials and some of these materials are oils and waxes that it will cause a fluorescence. By a fluorescence I mean cause some kind of bright reflectance in the visible spectrum.

In other words, you can see them with the human eye, as a bright color. The oils generally come back as sort of a white blue color and show up.

I examined these flecks under uitra violet radiation. They appeared dark and black and they didn't react in any way that suggested there was any oils related to them. (2703) Nor did I—but I didn't stop with this because it is just one test along the way.

I examined them also under infra red radiation. Now infra red is at the opposite end of the spectrum. It is beyond the red part of the rainbow. It is the hot part of the spectrum. Examining with an ordinary incandescent light bulb or light source or sunlight, either one, the paper illuminated with a good deal of infra red that the human eye doesn't record, but with an electronic viewing device or—that was one technique—I examined the flecks and I couldn't see them. They were transparent to infra red. The materials used in carbon paper, having metallic salts in them or actual carbon itself, both of which are recorded when you view them in the infra red range by an electronic device like this which you can use to just view it visually, you can see—these appear as dark, black color. They didn't appear that way.

Q. May I interrupt to see if that is clear. Are you saying that if you examined anything that is carbon or metallic salts, that under infra red examination, with what, a microscope? A. With an electronic viewing device.

Q. Have you got one here in court? A. Yes, I do.

(2704) Q. If you examined it through that, if it is common—

Mr. VanVoorhis: I think the witness ought to be allowed to answer, finish his answer without counsel interjecting himself.

Q. How will it—

Mr. VanVoorhis: I object to this.

The Court: You haven't allowed him to put the question. I can't rule unless I hear the question.

Q. If it is carbon material coming from carbon paper, how will the infra red examination make it appear on the paper? A. Well, it will appear as a dark—it will appear as black or dark gray color depending on the intensity of the metallic salts.

Q. And if it is not carbon, if it comes from an ink that is not carbon or metallic salt, what happens when you put under the same illumination? A. You can't see the outline at all. It is transparent to the infra red. The infra red rays are not absorbed.

Q. So it isn't visible at all even though it is a dark line? (2705) A. That is correct, yes.

Q. Now, did you make tests of that kind with your—what is it, electronic infra red? A. Yes, I did.

Q. Would this not be a good time to demonstrate it to his Honor and to counsel on the other side? Will you describe the test and take out that machine so that you could look on it visually and see what it is that you have just testified to. A. Well, I have a specimen here that I prepared using the two types of blue pencil and blue carbon paper which will show how even the blue carbon paper reacts under this viewing device.

Q. As what? A. When it is examined within the infra red range.

Q. What would it show? A. Well—

Mr. VanVoorhis: We object to this, your Honor, as manifestly not duplicating the condition of this letter. This kind of demonstrative evidence is mani-

festly viewing other factors, other situations, he is using different implements, crayons and so on, and we submit respectfully that this kind of demonstrative evidence (2706) ought not to be allowed.

The Court: Well, I understood that these were the instruments the witness used in conducting his examination.

Mr. VanVoorhis: They are, but they are not the material which was examined. They are quite different and the showing is likely to be quite meaningless, it is speculative and we object to it.

The Court: It will be treated accordingly.

Q. Will you please proceed?

The Court: It is really a demonstration of how he conducted his experiments, isn't that right?

Mr. Nizer: That is right, and it applies to any carbon. That is the point of it.

A. The specimen I have before me, which I can show his Honor is a specimen including seome light blue pencil and blue carbon paper, and I used the blue carbon paper deliberately because I was testing on the Kabazi document to see whether this substance was related to blue carbon paper, that is—

Q. What substance? A. This blue flecks on the back of Exhibit 158.

Mr VanVoorhis: May we ask what the witness (2707) is exhibiting be marked for identification.

Mr. Nizer: No objection.

Mr. VanVoorhis: I would like to see it.

(Defendant's Exhibit 88 was marked for identification.)

A. If I may show this to your Honor through this device, it needs to be held a few inches away and you move it back and forth. You need to get a little closer, your Honor, until it focuses on the—no, wait a minute,

at approximately that distance over it. You can see the blue carbon paper, but the blue pencil down below has been lost and the light blue, you may be able to see a very light line.

This shows the difference between the effective blue carbon paper and some other blue material, some of which including the marking device that the clerk used to mark this Exhibit D88 for identification, are transparent to infra red and can't be seen, they are lost completely. The stamp, the black stamp and the blue carbon paper typing appear there.

(2708) Q. Before you proceed, what is the top line of Exhibit for identification— A. It is a light blue pencil.

Q. A pencil mark? A. It is pencil. Then immediately below that is typed blue carbon paper, and then immediately below that is a darker blue pencil, a different blue pencil, and the lower one is completely lost.

Q. The lower one is lost for what reason? A. Because it does not contain—the conclusion you draw from this is that it doesn't contain any metallic salts, that the blues are of a dye nature rather than containing metallic materials.

Q. When you say it is lost, you mean it becomes virtually invisible when looked at through the infrared? A. Yes.

Q. What happened to the top line, a darker blue pencil— A. No, a lighter blue pencil.

Q. What happened to the bottom, which is darker blue? A. The bottom is lost, the top is very weak.

Q. And then the center is the carbon? A. Carbon, and it is as dark as you can see visually, without any instrument.

This same test which I performed can be done (2709) photographically and I made photographs of the back of the document, using infrared material and determined that the blue specks were lost, they would not record. By using infrared film, you put a filter that eliminates all of

the visible light between or over the lens so that the light that is reflected from the document, the only light that you are photographing is the infrared that comes through the filter and it is recorded and certain infrared-sensitive films. This film material is somewhat more sensitive than the electronic viewing device and it confirmed that we were dealing with a material that was not related, as I found, to blue carbon papers. All the blue carbon papers that I have seen and examined are recorded as black by infrared film.

Q. What material did you say a moment ago did not record? A. The blue flecks on the back of Plaintiff's Exhibit 158, the Kabasi letter.

Q. Go right ahead. A. I examined these blue flecks in another manner, as well, and that was that I made a different type of photograph, I made an infrared luminescence photograph, and while this sounds somewhat similar to what I did before, it is an entirely different technique. You use an infrared (2710) sensitive film and a filter over the lens that allows only infrared light to pass through, that which is not visible to the eye, but you illuminate the document with light that is passed through a copper sulphate solution—that is what I used, but there are other filters that can be used. The copper sulphate solution takes out the infrared portions of the light and, in fact, instead of transmitting pure white light it transmits light that is a blue-green color, the color the copper sulphate is when you hold it up to the light.

Certain dye materials—not all of them, but certain ones—can cause a luminescence in the far red—that is, part of the red spectrum the human eye can see, or be more of it beyond that in the infrared, where it can't be seen by the human eye.

Recording it on a film takes an exposure of about two minutes in order to achieve this, and I photographed a portion of the back of the document with this technique and I discovered by this procedure that I could record all

of the blue flecks as little white flecks, or shiny white coloring, which is the luminescence of this material, in other words, that it reacted in this manner.

Now, as controls, I tried photographing blue carbon paper in the same way, comparable to what we had (2711) here, and with the luminescence test, the blue carbon paper only shows black, it doesn't show the bright luminescence.

I mentioned that I checked for the blue flecks on the front with the microscope; I also made a luminescence photograph of the face of the document and I did not find any of these blue flecks fluorescing around the areas of the holes in the adjacent edges of the holes where they might have been picked up if they were carbon paper, and I could find none of them. I used this technique because it showed the material more readily than it could even be seen visually.

Consequently, as a result of this study, I concluded that these blue flecks had nothing that indicated that they were related to carbon paper, that they were some other material, they were not blue from the carbon itself, and I found no evidence of carbon from any other—any other way as I described before.

So the blue flecks, in my opinion, do not establish that a carbon sheet was used. Some material has gotten on this document at some time either during its preparation or subsequent to the—I don't know when—but, at any rate, there are these blue flecks, microscopic in size, but in my opinion they don't indicate anything that (2712) has to do with preparing a carbon copy.

As a further test, I checked each one of the documents that I described before that had come from these Arabic documents—that had come from the Ministry of Petroleum Affairs where there is indication that carbon copies were made and they are official documents and carbons should have been made, and I found in none of these documents any corresponding blue flecks. That would include even

D86 in evidence. I did this deliberately because here again we are dealing with material used in a country that is—information is not readily available here in the United States as to the kind of materials they used and so, consequently, I wanted to check and see whether any of the official carbon paper that came from the Minister of Petroleum Affairs' office might have given this kind of markings on the back of paper, and it did not.

I also tried with a number of different kinds of carbon paper to duplicate this in any way. I used worn sheets of carbon paper with a blue-gray backing on it and I couldn't duplicate the flecks. In fact, they are in much greater number than I would expect to find from just a worn sheet of carbon paper where there would only be breaks here and there. I did not find any blue flecks with old paper. I used green, gold, blue and this blue-gray backing, and some of it was of (2713) a highly glossy finish and some of it was a flat finish, and none of it offset as I prepared specimens.

So that these were further controls that I made before I reached the conclusion that these blue flecks did not indicate a carbon copy. All of these factors in combination lead me to the same conclusion, each and every one individually, that a carbon copy was not prepared, and when you consider them in combination and consider the fact we are not dealing with one or two breaks in the paper or one or two small flecks on the back of the paper but a large number of flecks and 9 very substantial breaks and 20 other hairline breaks in punctuation points alone, all of this evidence in combination, in my opinion, establishes that a carbon copy was not prepared when Exhibit P158, the Kabazi letter, was originally typed.

Mr. Nizer: Your witness.

Ordway Hilton, for Defendant, Cross

Cross Examination by Mr. Greenspoon:

Q. Mr. Hilton, is there any doubt in your mind but that the Kabazi letter was typed with a black ribbon? A. No, it is a black ribbon.

Q. And I think you told us that you found some black spots on the back of the Kabazi letter where it had been embossed or fractured? (2714) A. That's correct.

Q. And I think you told us that that came, or those microscopic spots, came from the black ribbon? A. Yes.

Q. No doubt about that in your mind whatsoever, is that right? A. That's right.

Q. Did you take any photographs of the back of this letter using color film under ordinary light? A. Yes, I did.

Q. Do you have them here? A. No.

Q. Let's get them and produce them, please. I would like to see them.

Now, will you tell us what the magnification was that you used? A. On the negatives? They were about one and a half times natural size. They were not enlarged very much.

Q. Did you enlarge any of the photographs to as much as 65 to 1? A. No.

Q. Where are these photographs which you took under natural light— A. They were not taken under natural light. They were (2715) taken under electronic flash, which I take all my colored films with.

Q. Where are they? A. In my office.

Q. Can we have those here this afternoon? A. Yes.

Q. And they are one and one half to one? Is that the magnification? A. From my recollection. I would have to look at them and determine it, but they are somewhere in that range. They are not enlarged very much.

Q. You also told us there was some light blue flecks on the back of the Kabazi letter, isn't that right? A. That's correct.

Q. By the way, what is the meaning of the word embossing? A. Embossing? There are indentations in the document and on the back side there would be raised portions.

Q. That is caused by the keys striking the piece of paper, the keys of the typewriter cause the embossing on the letter? A. Yes, with the typewriting, yes.

Q. Would you say, in your opinion, that the Kabazi letter contains a substantial amount of embossing? (2716) A. Yes, it does.

Q. Would you also say that around some of the fractured holes there are two different colors? A. Yes. There is black and blue.

Q. There is black and there is light blue, correct? A. Yes.

Q. Around the holes where the paper was fractured, isn't that right? A. Around the embossing of the holes, yes.

Q. I take it that the hole is nothing less, is that right? A. Yes, but I am considering the outer edge of the embossing as well as the inner edge.

Q. And you mentioned a comma which appeared after the word "therefore" in the fifth line of the second paragraph. A. That's correct.

Q. And there was a clear fracture of the paper? A. That's correct.

Q. Did you photograph the Kabazi letter, at the point of that comma? A. Yes.

Q. At what magnification? A. About 18 diameters. (2717) Q. Does that mean 18 to 1? A. 18 to 1, yes.

Q. So that one inch of the Kabazi letter would show up as a picture 18 inches, is that right? A. Yes.

Q. And if you magnified it 65 times the size of the comma in the letter, that would mean that one-eighth inch of the Kabazi letter would show up at about an eighth of an inch in photographs, isn't that right? A. Roughly, yes.

Q. Could you tell me, from your examination of the document, whether that which I show you is an accurate description of what appears at the back of that comma on the Kabazi letter? To help you, I will tell you the magnification is 65 to 1, approximately.

(Pause)

A. It is about as accurate as color photography can be in reproducing the colors. In other words, there is the blue coloration around the outer edges of that paper was from the hole.

Q. And there are also black colorations there, aren't there? A. Yes, that's correct.

Mr. Greenspoon: I offer that document in evidence, (2718) Plaintiff's 209.

(Pause)

Mr. Nizer: Does counsel represent, since there has been no foundation laid through testimony, which you may later—does counsel represent that this is a photograph of the hole that he described in putting it to the witness?

Mr. Greenspoon: That is what the witness told us, that that is as accurate as you can get through color photography.

Mr. Nizer: I don't think the witness has told us, nor do I believe he can, whether he knows that is a photograph of that particular hole.

Mr. Greenspoon: I think he has identified it.

Mr. Nizer: Mr. Hilton, may I have the answer to that, if you can, with his Honor's permission? If you can state it, state it, if you can't, tell me, sir.

A. May I see the photograph again?

(Handed to witness)

Mr. Nizer: My question is, do you know by looking at that that has a photograph of the hole described in the comma of the second paragraph. Can you tell that by looking at it?

Mr. Greenspoon: Or any comma.

(2719) Mr. Nizer: No, no, if you are not going to make a representation—

The Court: I understood, Mr. Greenspoon, that you made a representation that that was a magnification of the hole that appears in the comma after "therefore" in the second paragraph of the letter.

Mr. Greenspoon: What I said, your Honor—

The Court: If I am mistaken—I was under the impression you were making the representation—

Mr. Greenspoon: I asked the witness if that was the picture of the back of the comma and I represented it was magnified I believe 65 to 1.

Mr. Nizer: I am getting more—

The Court: Well, now, start all over again. Let's eliminate all the discussion on the part of counsel and the court and will you start from scratch, Mr. Greenspoon.

By Mr. Greenspoon:

Q. Will you please take a took at Plaintiff's Exhibit 209 for identification and tell me whether or not that is a magnification of the back of a Kabazi letter and I th' k that that appears at the comma after the word "ther .ore" in the fifth line of the second paragraph.

Mr. Nizer: I object to "I think." If counsel made a representation, and I am getting more concerned about (2720) this—I thought there was a representation that that was a photograph taken 65 to 1 of the comma after the word "therefore" in the second paragraph. If counsel is hedging on

that, I object to this document until a foundation is laid to what it is supposed to be a photograph of.

Mr. Greenspoon: I am challenging this witness' expertise, your Honor.

Mr. Nizer: That is no answer to my objection.

The Court: He may answer.

A. I am not certain that this is a photograph of this particular comma. It is very similar to it and some aspects of it look like it, but there is a dark coloration up at the top that I cannot locate in the original document. Whether it is shadows or what it is, a flaw in the photographic process, I don't know, but—

Q. Take a look at all of the commas that are fractured in the Kabazi letter and tell me whether that is an accurate photograph of the back side of the sheet magnified 65 to 1.

Mr. Nizer: Same objection, your Honor. To show the witness simply a hole on an enlarged photograph without laying a foundation for it and now counsel withdrawing his representation, makes me press my objection even more. I object that there is no foundation laid for stating that (2721) that is a photograph of anything—

The Court: Objection sustained.

Mr. Greenspoon: Your Honor, I am challenging this witness—

The Court: Please don't argue with the court. It started out with "I believe" and in the absence of proper foundation as to the particular exhibit for identification, the objection is sustained.

By Mr. Greenspoon:

Q. I show you Plaintiff's Exhibit 210 and I ask you if you can identify that as a photograph of any of the fractures where a period appeared in the Kabazi letter.

Mr. Nizer: Same objection, your Honor, without a foundation being laid that it was taken of the back of this letter. If counsel will so represent, I will accept his word, but I press my objection—

Mr. Greenspoon: I represent that these photographs were taken and they are of the back of the Kabazi letter, one of them being of a period, one of them I think of the comma after "therefore" but I am not positive where it appears—

The Court: You are representing they are photographs of the Kabazi letter?

Mr. Greenspoon: Yes, sir, 65 to 1.

(2722) Mr. Nizer: The question is whether he can identify it as such?

Mr. Greenspoon: Yes, whether he can identify them as such.

A. I would have to have a great deal more time to examine these holes and trace the outlines. Here again, in this photograph, as in the other one, there is a very large black or dark area up at the top of the period hole. Unless the picture was given to me upside down and it is the bottom, that doesn't relate readily to the conditions on the back of this document.

Q. In other words, your careful analysis of the back of the document does not enable you now to identify either of these documents as having been color photographs of a period or a comma on the back of the Kabazi letter?

Mr. Nizer: Objection.

The Court: The objection is sustained as to form. The witness just stated he would require much more time and you included in the question "your careful analysis."

Q. When you were examining the document, the back of the document, how long did you have it, the Kabazi letter? A. Well, I had it for quite a period of time—

Q. How long did you have it? A. But the examinations were limited to five seconds, (2723) I believe.

Q. How many days? A. It was in my office, sealed, from early February until March.

Q. On how many days did you examine the document? A. I believe on six different occasions I examined the document, from recollection—I would say six—

Q. For how many hours did you examine the documents? A. How many hours?

Q. Yes. A. Well, that would be in excess of 20 hours.

Q. Did you carefully examine it during that 20-hour period of time? A. Yes. I gave it a great number of examinations and I re-examined a number of things.

Q. My question is, did you carefully examine it, in your terms? A. Yes.

Q. Both the back of the letter as well as the front of the Kabazi letter? A. That's correct.

Q. From that careful examination which you made, can you identify those two pictures, 209 and 210 for identification, as being color reproductions magnified of a comma (2724) and of a period on the back of the Kabazi letter?

> Mr. Nizer: Your Honor, I object to that. His testimony was that he made a certain type of magnification and he is given another type of magnification and he has stated he needs time to check it to see whether it is that same thing and I think he should have that opportunity, since he is going to bring the photographs and he will have an opportunity even to make it, perhaps.
>
> The Court: I will let him answer now and if the witness desires a further opportunity to examine it, I will afford him that opportunity.

A. If I may answer in this way, there is only one comma in which there is a substantial break in the round portion of the comma. That is the one after "therefore."

However, the photograph as presented to me contains a very large dark area at the top of this photograph which even with a hand magnifier here in the courtroom I can see is not part of the back of the document and this immediately raises the question in my mind as to whether this came from here or whether it is a defective photograph. It may merely be defective lighting on the photograph that has created shadows that do not exist in the original or dark areas that do not exist in the original.

Q. Is it your testimony that you cannot identify those (2725) two documents as constituting photographs of the back of a comma and the back of a period on the back of the Kabazi letter? A. At this time I can't.

Q. But there is one thing crystal clear, that from your examination of the Kabazi letter you say at fractures on the back of the letter both a black coloration and light blue coloration around the lip or edge of the comma and the period, etc. A. I found blue colorations around the periods. I found black, of course, around most—well, virtually all of the breaks had some black.

Q. Do you know a man by the name of John L. Harris? A. Yes.

Q. Who is he? A. John L. Harris is a document examiner on the west coast, in Los Angeles. I think Mr. Harris is virtually retried now, although I believe he still does some work.

Q. He is one of the great names in the questioned document field, isn't he? A. He is quite prominent, well known in the Los Angeles and California areas of the company.

Q. As a matter of fact, he is generally recognized (2726) as one of the greatest experts in the busness, and was, was he not? A. He is a very capable expert. I am not going to discuss whether he is one of the greatest or not. I think this is an opinion that varies from person to person.

Ordway Hilton, for Defendant, Cross

Q. And you were the police science editor of a publication called "The Journal of Criminal Law, Criminology and Police Science" in July and August, 1959, isn't that right? A. Yes.

Q. Did you read the articles which appeared in that publication as they were published? A. The police science articles I read not only as they were published, but in manuscript and edited them.

Q. Did you read an article "Typewriting, original and carbon copies," by John L. Harris? A. Yes.

* * *

(2727) Q. Do you recall reading this particular article by John L. Harris when you were the police editor (handing)? A. Yes, I read the article and I edited it. In fact, I accepted it for publication.

Q. So you are thoroughly familiar with it? A. Hardly.

Q. At the time. A. At the time I was familiar with it, yes, but I have not looked at it since 1959.

Q. As part of your editing chore you reviewed it at the time and corrected any errors or mistakes or anything of that nature that was made by Mr. Harris, if any? A. I corrected typographical errors, things of that nature. I know I didn't do any editing of John L. Harris' writing in the sense that I made changes in his statements or composition.

* * *

(2729) By Mr. Greenspoon:

Q. I am quoting these words "From examination of original ribbon copy was a duplicate carbon copy made?" Now, that is all you had before you, the original ribbon copy? A. Yes.

Q. You didn't have either the carbon paper or a carbon copy of the letter, isn't that right? A. That's right, because I don't believe one has been made.

Mr. Greenspoon: I move to strike that latter remark.

The Court: I will allow it.

Q. "1. Check the depth of the impressions on the back side of the original. Most likely the paper will not be punctured unless there was more than one sheet of paper in the machine." Do you agree with that? A. Not entirely, no.

(2730) Q. "2. Sometimes on a hard platten sharp letters have a tendency to cut deeply or entirely through the original copy if only one sheet of paper is in the machine." Do you agree with that? A. Yes.

Q. "3. If the spacing between lines of typing is more than six to the inch, there must have been additional sheets or loading to cause the spread on the original." Do you agree with that? A. Yes.

Q. "4. Examine microscopically the holes made by punctuation marks on the back of the original. If there are two colors around the torn areas, one color is from the ribbon and the other is from the carbon paper." Do you agree with that, yes or no? A. No, not entirely. That isn't necessarily always correct.

* * *

(2734) Q. Now, would you agree, Mr. Hilton, that whenever there is intense embossing that means that you either used backing sheets or carbon copies were made?

Mr. Nizer: I object, first, to the inclusion of the word "intense" when the witness—

The Court: The witness hasn't testified as to intense. Use his language.

Q. What was the word you used to describe—

The Court: Marked.

Mr. Nizer: More than marked.

Mr. VanVoorhis: Beyond moderate.

Q. Beyond moderate. Would you agree that where the embossing is beyond moderate as it is with respect to the Kabazi letter that that means that either backing sheets were used or carbon copies were made? A. I don't like the plural in that and I object to the plural, a backing sheet or a carbon copy may have been made to produce that kind of embossing. I would agree to that.

Q. You wouldn't go so far as to say that either a backing sheet or a carbon copy was made in view of the (2735) more than moderate embossing on the Kabazi letter? A. From my examination of the Kabazi letter, I am strongly inclined to the conclusion that a backing sheet was used, not a carbon copy.

Q. But certainly you agree that something was used behind the original of the letter? A. I would expect that to have been the case for a number of reasons.

* * *

(2768) Q. If you used a black ribbon, and you agree that the Kabazi letter was typed with a black ribbon—don't you? A. Yes.

Q. And if the front of the carbon paper was light blue, you would have a duplication of colors on the back of the original, to wit, assuming the fracture, black from the ribbon and light blue from the front of the carbon paper, isn't that right? A. If it were carbon paper, which it is not.

Q. Just take my assumptions, please.

Mr. Nizer: He has taken them. I object to that.

Q. I am asking you to utilize my assumptions. If you assume that the ribbon is black and the carbon paper, the front of the carbon paper, is light blue and you have this fracture you are talking about and this intensification or pull-back, you would then have two colors, wouldn't you, a dark black from the ribbon and a light blue (2769) from

the front of the light blue sheet of carbon paper? A. Along the edge of the hole that could be seen from the front in some of these nine holes, which we do not have.

Mr. Nizer: Do not have where?

The Witness: I am talking about Plaintiff's Exhibit 158, the Kabazi letter, which I understood the cross-examination was about.

Q. But there is no doubt about it that the light blue appears around the holes on the back of the original of the Kabazi letter? A. Yes. It could get there from a backing sheet as easily as from carbon paper.

Q. What kind of backing sheet would you suggest could be used which would pull color out through the utilization of a key? A. The way this is adhered to places not only around the holes but at other places in the document, could be, and I don't say that this is the only answer, but this is one possibility, that it could be some sort of blue material that is lightly bonded to the sheet of paper that was used as a backing sheet. Now, that could be, and I have duplicated this with blue pencil writing on a sheet of paper and been able to take the blue off, the pencil (2770) writing off, in little fragments when I typed against this as a backing sheet, because of the light bonding.

Q. Well, now, as a matter of fact, you used Plaintiff's Exhibit 217 to retype the Kabazi letter, didn't you? A. I did, yes.

Q. Where is the original and copy that you made? A. From this particular sheet of carbon paper?

Q. Yes. A. Well, I don't know, but—

Q. Did you throw them away? A. Heavens no.

Q. Would you mind producing them? A. Well, I don't know that I can produce this particular copy because I made two or three—quite a few, in fact—

Q. You certainly made one. I can read it on the back of the carbon paper, can't you? A. Yes—well, I presume that since this came out of the file that that is what it is.

Q. Well, we will pass that for a moment, to find that later— A. I have it right here, but go ahead.

Q. I would like to talk to you about this backing sheet which you just referred to. Do you remember that? A. Yes.

(2771) Q. And you indicated that a light blue coloration might be lightly bound to the backing sheet? A. Lightly bonded.

Q. To the backing sheet? A. Yes.

Q. What does that mean lightly bonded? A. Well, this backing sheet is very tightly bonded to the carbon coating on the front, because it is rolled on there when the carbon ink is hot and it rolls through rolls and rolls on there like a printing press and it adheres very tightly to the paper that is behind it. This is a type of bonding.

By the same token, the printer's ink on the back of this paper is tightly bonded to the paper because the ink penetrates into the paper and gets a good, firm grip. Now, pencil writing—

Q. Please, I asked you what you meant by lightly bonded and I have not heard an answer yet.

Mr. Greenspoon: I move to strike that.

Mr. Nizer: I ask that he be permitted to finish his answer.

Mr. Greenspoon: I asked him what he meant by lightly bonded and I have not heard a word on that yet.

The Court: Are you answering his question?

(2772) The Witness: I am trying to, sir.

A. With a lightly bonded material, it is on the surface of the paper—I am talking about a material on paper now, because that is what we are dealing with in

connection with Exhibit 158—it is only the surface of the paper, it adheres to it and it sticks to it, but it is pressed on there in such a way that it does not really penetrate into the fibers and get a tight grip and, therefore, it is relatively easy to take off—I say relatively easy, it is not really simple to, but, for example, with black pencil writing on paper, you can smudge that, rub your finger over it and get some of the black on your finger that is not tightly adhering to the paper and you will cause smudging. You can do the same with blue pencil or green pencil and you can take it off by typing against it as well or by writing on a sheet of paper, for example—well, not Exhibit 158, please, but just a plain sheet of paper like I have here, if I laid that on top of some other pencil writing and wrote across it I would get some black or colored offset, depending on the pencil.

Q. By the same token, there is plenty of cheap carbon paper where the front is lightly bonded to the carboned side, isn't that so? A. I don't believe that is so.

(2773) Q. Do you know anything at all about European carbon paper? A. I do.

Q. What carbon paper have you ever seen that was manufactured in Europe? A. Well, I have seen some very fine carbon papers that were manufactured in Europe.

Q. Have you ever seen any poor quality carbon paper manufactured in Europe? A. There are some papers that are not as good as others manufactured in all countries, but the process of coating the carbon onto the paper makes a firm bonding—

Q. Of the carbon? A. Of the carbon to the paper.

* * *

(2778) Q. Now take a look at 218F where you put the brackets and tell me if it shows anything different from when you looked at the back of the Kabazi letter. A. Incidentally, you don't see any of the blue marks on the Kabazi letter either.

Q. You don't? A. Not when you look through this. Again you see faintly the typewriting on the face of the document.

Q. The same as you see when you look at the Kabazi letter, you see faintly the typewriting on the document? A. In other words, you are seeing the carbon impression on all of these documents very simply. That is what (2779) the device shows you.

Q. Exactly, and now, if that device magnified 65 times, what do you think you would see when you looked through the Kabazi letter? A. You would see the same thing with the carbon and you would not see the blue spots.

Q. Do you see any blue spots on 218F or C or D86? A. There are none on there. I have examined them very carefully under the microscope and there are no blue flecks at all such as you have in the Kabazi letter.

Q. And you suspect, do you, that those blue flecks come from what you call a backing sheet? A. They have to come from something like that, something that was behind the document at some time or other, unless they were deliberately put on there by someone, which I can't be sure of.

Q. How would you go about imbedding—how would you go about it—since you are an expert—imbedding with this blue coloration into the area surrounding the holes? A. Well, all the raised portions would be more apt to take anything that came in contact with the back of that document, whether it was during the typing process or when it was stored, for example, if it was stored against (2780) something that would offset on it. This is possible. Actually, the Kabazi letter now is very badly soiled on the back because it has been stored against this soft black paper, and consequently there are a lot of black discolorations, slight but microscopic, around the folds of the paper and the like that shows the dirtying part of it undoubtedly came from the soft back.

It should have been stored in the clear glass so both sides could have been examined simultaneously.

* * *

(2781) Q. Now, if you will assume for the sake of argument that the blue, light blue markings on the back of the Kabazi letter are imbedded in the fabric of the Kabazi letter—will you make that assumption? A. They are not; they are on the surface.

Q. Will you make that assumption, please? A. I can't make an assumption that is contrary to fact.

Q. We will see what the fact is when we have an expert on that subject, on photography here. Make that assumption here. A. I examined them under a microscope and I could see them adhering to the fibers and not imbedded.

Q. Regardless of what you saw, will you take my assumptions? A. All right, I will assume things that are not (2782) facts.

Q. What you say are not facts. A. That is exactly what I am saying.

Q. I see. Well, take my assumption that the blue, the light blue is imbedded in the fabric of the paper. Is there any way that that light blue can be imbedded except through the application of pressure? A. No, it probably would—I would say that pressure was the most logical way that it could be, if you mean imbedded, wedged in between the fibers, why, yes, that would be what would happen.

Q. And when a key strikes a sheet of paper, that is a typewriter key, that applies tremendous pressure over a very small area of space, isn't that right? A. That's correct.

* * *

(2803) Q. And D86 is the one you compared to the Kabazi letter, 158? A. Yes. It is the only one among the whole group that is anywhere near the Kabazi letter.

Mr. VanVoorhis: Or any of the others.

Mr. Nizer: You mean near in time.

The Witness: I mean near in size and other characteristics.

The Court: Is this the one where you overlay one on the other to show the difference in size?

The Witness: Yes, sir. That was the top one of that exhibit.

Mr. Greenspoon: At this point I am offering 158 in evidence, Mr. Nizer.

Mr. Nizer: Subject to the same objection I made when it was offered, subject to this *voir dire* examination (2804) and the Kabazi deposition, which we are also objecting to—

The Court: What is the latter part? I didn't hear you.

Mr. Nizer: And subject to the objections which we have made to the Kabazi deposition.

The Court: I am going to reserve decision on that until I hear the other testimony as I understand which will be offered as to it.

Mr. Greenspoon: Well, at the moment—

The Court: Realistically, gentlemen, there are two issues with respect to this letter. One, I take it, is the question as to whether it was actually sent, is that correct?

Mr. Nizer: Yes, your Honor.

The Court: And that, in and of itself, presents an issue of fact. Two, there is the obvious question as to its relevancy based upon the contention that it contains self-serving declarations and also that it is hearsay, I take it whether or not it is a genuine document, to use that term, goes to its admissibility, its competency, at a given point. I assume that if there is counter evidence there is no basis on which it could be excluded unless it

is excluded because it is hearsay. Does that correctly state (2805) your position?

Mr. Nizer: Yes, your Honor. I think however it is limited to this extent. Your Honor will recall that there are we claim internal evidence of the spuriousness of the document? So far as its date is concerned, such as the fact that this is written in Engish when Kabazi testified under oath that he—

The Court: But doesn't that really go to whether or not the letter should be given any weight at all?

Mr. Nizer: Right.

The Court: What you are arguing is that objective facts in addition to whatever you are urging with respect to the origin of the letter, allegedly how it was prepared, and the rest of it—I lost the beginning of my sentence. Read the beginning of it.

(Record read)

The Court: —establish that it is a spurious letter and should be rejected completely.

Mr. Nizer: That's correct. That is our position.

The Court: Even if it is accepted, taking into account the last statement, you also rely on the fact that obviously it contains self-serving statements.

Mr. Nizer: Precisely.

The Court: And those self-serving statements you (2806) say are not proof of the fact contained therein.

Mr. Nizer: Exactly.

The Court: And eventually the court with respect to whether or not the Galic group turned up the concession will have to decide whether in fact the plaintiff has established its burden that the Galic group did turn up the concession and

the fact that it is contained in that letter doesn't prove it, isn't that all you are really arguing?

Mr. Nizer: Yes, your Honor.

The Court: I must say I think we have spent a tremendous amount of time on some of the issues that really dissolve in relationship to what the real issues in the case are. I suppose we have gone this far and this—and we may as well take all the evidence, including the balance of the defendant's testimony on this subject with respect to the letters plus whatever the plaintiff wants to offer. I am prepared to say now this case certainly is not going to turn on this letter. This is simply a man saying whatever he allegedly had done.

Mr. VanVoorhis: Well, your Honor, I don't imagine that at this point you want to hear extended argument—

The Court: You may answer the statement I made. (2807) I will repeat for the record: this case certainly is never going to turn on this letter.

Mr. VanVoorhis: A great deal of time and effort has been devoted to this by the defendant to try to demonstrate that this letter was spurious. This we rebut and repel and we consider it to be entirely misplaced. This letter has not been shown to be not genuine. A great deal of time, motions, a great deal of importance has been given to it by the defendant, with no result.

So far as whether or not it is self-serving or hearsay, we maintain that under the Libyan law it was the duty of the Minister of Petroleum to investigate and study these different applications. These applications which have been referred to as sealed or closed bids really leave an enormous amount to the discretion of the Ministry of Petroleum. In fact the law says where there is more than one application made for a single block, that

the discretion is absolute. There is no high, no low bidder here and the circumstance that the Minister of Petroleum made a record, attached the condition, if you will, of the fact that the award was being made to Occidental on the assumption that it could dispose of the oil, whatever oil might be discovered in the area covered by the concession and that the plaintiff in this case, Allen & Company, was backing it financially (2808) is a very important, integral part of this award.

This has been touched on before, it will be touched on again, but I would like to have it clear on the record that the plaintiff's position is that this document is much more than hearsay, more than—

The Court: I say that it is simply Mr. Kabazi's own statement. I am also saying that eventually on the issue of what he did and whether or not the Galic group turned up this concession, which will be based on the evidence in the case as to acts, conduct and statement and also upon the credibility of the witnesses, and the case certainly does not turn on this letter as you seem to suggest. Moreover, this issue may be blown up, as you suggest, by the defendant, but as I am prepared to state, by the parties themselves, beyond its importance. That doesn't mean that the court must give it importance or that it is controlling. I am saying that the determination of what I regard as three basic issues in the case, which I shall advert to at one time or another, probably within a day or two, must be decided upon evidence.

Mr. VanVoorhis: We don't say that the whole case turns on this letter any more than it does on any other single bit of evidence in the case, but we do say that the letter is definitely a part of the acts, conduct and (2809) statements of the Minister of Petroleum and we consider that that

definitely bears on the question of whether Galic turned up the concession.

The Court: Well, I think you may be pressing your point too much, for this reason: an issue has been raised and I am certainly not suggesting that I have any answer to the contested issue, but supposing I decide that this letter was prepared deliberately after the concessions were granted for the purpose of aiding Galic and the plaintiff in this case, on your theory that would end the case as far as you are concerned, and I am saying I am going to decide the case on other evidence.

Mr. VanVoorhis: I don't see how your Honor could possibly make such a finding as that.

The Court: I have not given any indication. I am sitting as the trier of the fact, and don't misunderstand that last statement. I have a complete open mind on this issue. The plaintiff still has to offer its evidence, I am aware of that, but I am simply saying that both of you have overemphasized the importance of this one item in this case in terms of the issues that arise under the pleadings in the case.

Mr. Nizer: If I am not taxing your Honor's patience too much, I will be very brief—

(2810) The Court: I have patience. Go ahead.

Mr. Nizer: Your Honor, Judge VanVoorhis has not made a single statement addressed to the issue as to why it isn't hearsay. I will go one moment or two to his repeated argument that Mr. Kabazi had discretion and therefore all of this was within his discretion, and I simply point to the fact, without elaborating at this time, that Mr. Kabazi called this a private letter, not a ministry letter, not written on the letterhead of ministry, that he destroyed everything surreptitiously about it because he knew

of the law that said he must not advise anything in advance of concessions awarded and the first sentence is supposed to say that, obviously attempt to collaborate, and again without identifying the other evidence. In specifics, the entire relationship testified to between Galic in his deposition is one of—it violates the truth with respect to the fact that this was granted on the merits but their contention is that it wasn't, that he performed through violations of law on both sides, conspiracy with each other, hook or crook, not recognizing him on an airplane and a dozen other things I shall cite at the appropriate time, if necessary. So that the speech Judge VanVoorhis made when he was up on the witness stand readi g the deposition, about this turning out to be discretion, is now a rather (2811) empty exercise in light of the evidence before your Honor which we will argue at an appropriate time.

Mr. VanVoorhis: Your Honor, that is not our position at all and no matter how many times Mr. Nizer repeats what he just said, doesn't make it so.

* * *

By Mr. Greenspoon:

Q. Just to clarify it, so there can't be any question about it, P158 and D86 were written on entirely different kind of paper than the 218 series, you agree with that? A. Yes.

Q. And I take it you also agree with the statement in your book at page 75 and I quote, "But still there are many papers which differ sharply from one another and even products of the same mill made only a day or so apart may have properties by which they can be distinguished."

Mr. Nizer: Will you read the sentence before that (2812) please.

Mr. Greenspoon: Certainly. I will read two sentences before that.

Q. "Numerous kinds of paper made specifically for writing purposes are in common use today. These are produced in large quantities—thousands of sheets at a time of identical composition. But still there are many papers which differ sharply from one another and even products of the same mill made only a day or so apart may have properties by which they can be distinguished." That you agree with? A. Yes, I do. I agree with Hilton of 56.

Q. I believe you testified—my notes may not be absolutely accurate—that there were two things which led you to believe that this was not typed on a British Olivetti typewriter, is that right? A. Well, there are two different facets to the reason why it wasn't done on a British Olivetti.

Q. In your opinion? A. That's correct.

Mr. VanVoorhis: How do you spell facet?

Mr. Greenspoon: This one is with an e.

Q. The first you said was the fact that the numeral 3 had a flat top in the Kabazi letter, correct? (2813) A. Yes.

Q. And the second was that British Olivetti did not make a half space, one and a half space and that type of spacing? A. That's correct.

Q. That British Olivetti made only single space, double space or triple space? A. Yes.

Q. I take it by that you mean that when you pull down that little lever, the paper moves one space or if you pull it twice it moves two spaces and three times, it pulls down three spaces? A. Well, I don't quite agree with—oh, you mean the setting? That is right, you can set it

for 1, 2 or 3 spaces. So when you use the carriage return on a manual typewriter and push it back it automatically spaces at what you set it at.

Q. If you set it at a single space and if you pull the lever twice, you would have double space? A. That's correct.

Q. And it is your testimony, I gather, that the Kabazi letter was written on one and one and a half spaces? A. That's correct, yes.

Q. And that could not exist unless you had half spacing? A. That's right. You would have to have a special ratchet (2814) for that.

* * *

(2837) Q. Now, I think you told us that the paper on which the Kabazi letter was written is not a very good or high-quality paper, isn't that right? A. That's correct.

Q. By the way, slight modification of the platen varies the vertical spacing, isn't that correct? A. Yes. That is, any change in the diameter of it would vary.

Q. Now, is it not also true that as a sheet of carbon paper gets a little age or use to it the back, that is, the non-reactive part of the paper, chips off? A. This is awful hard to do because I have tried in experiments in connection with this matter in trying to reproduce these blue flecks, I used two very battered sheets of carbon paper and I couldn't chip the back off on any of them by knocking holes in paper and all.

Q. What quality of carbon paper were you using, American-type quality? A. I was using well-worn battered up carbon paper, both European and American.

(2838) Q. Who manufactured it? A. One of this sheet similar to the one you marked in evidence.

Q. That is the Royal? A. That is the Royal, yes, but this one had been badly used, and the other was a German sheet of carbon paper.

Ordway Hilton, for Defendant, Cross

Q. What color backing did the carbon paper have which you used? A. One was a—was the same brand as you have marked in evidence there, that blue-gray color that somewhat duplicates the color or gets close to the color on the back of the Kabazi letter, and the other was a red color that would stand out and be very easy to detect.

Q. Now, isn't it the fact that as the sheet of carbon paper gets worn that some of the backing will chip away? A. I have just answered that question to the best of my knowledge, if it does in the occasional case, possibly, but I have not been able to duplicate this.

Q. Well, let's read what you said at Page 2701. "Now, it is possible that as the sheet gets worn, that some of this paper might actually chip away."
(2839) Do you remember that? A. That is possible, yes. I say I have not been able to duplicate it and certainly not in the quality that we have in 158.

* * *

(2851) Q. Counsel showed you the carbon and original which he offered in evidence as 223 and you said you used controlled tests. Tell us, very briefly, now, and I want to be brief about all of this, what was the controlled test that you used and what did it show by making these various copies with carbon paper of the Kabazi letter? A. Well, these various copies made with carbon paper of the Kabazi letter, and also controlled tests without carbon paper and with various kinds of backing material, were made for a number of purposes, one, to see under what conditions you might get flecks on the back of the paper, whether this could be done with the available carbon papers—

Q. Did you find any? (2852) A. I found none—that is, none from carbon paper. I was able to reproduce them with other materials, yes.

Q. Did they have carbon in them? A. No—well—

Q. These other flecks that you were able to reproduce? A. The ones I got from blue pencil I didn't check and I

can't say whether—they didn't have carbon in them, but they might have had—

Q. Metallic salts? A. Yes.

Q. Some pencils have that? A. Yes. And they came off readily.

The other aspects of these tests were made to have a series of fractures of paper where I knew exactly what kind of carbon paper was used so that these could be studied in detail, and they were studied in detail, both front and back.

Q. Give us, very briefly, your conclusions from these controlled tests. A. From these controlled tests, I found that when carbon paper was used you had a very small, microscopic accumulation along the edges of the holes of more intense inking. This is when the paper was seriously fractured and (2853) when you used color carbon paper, such as red or a blue that would contrast well, you could detect that portions of this material that was drawn up there did in fact come from the carbon paper itself. I did this so that I could verify what appeared to be the situation, because when they were typed without carbon paper behind them, backing papers or just against the platten and you had fractures, you didn't have this additional accumulation.

Q. Assuming for the sake of argument that any of the carbon paper, the paper as distinguished from the ink side, peeled off, in your opinion would there be such carbon which would register with the peeled off section? A. I would expect to find some, unless this is some kind of a coating that is on top of another coating, but if it is the peeling off of the back of carbon paper, such as could possibly occur as the carbon sheet got badly worn and cut up—

Q. Assuming that, for the sake— A. Then part of that would have fragments. I would expect to find fragments of carbon attached to that. Particularly in P158, we are not dealing with one or two of these small flecks where

chance comes into consideration, but we are dealing with a very high number.

Q. Can you give us some estimate of what you mean (2854) by high numbers? Does it run into hundreds of microscopic flecks, or even more? A. I made no count of them, but by the areas—as you look at certain areas of it, these flecks get up in the hundreds or in the neighborhood of a hundred or more than a hundred.

Q. And in any of these did you find any sign of any carbon in the flecks, by your tests? A. No.

Q. Would it matter whether the flecks are around the outer edges of the holes or whether they are spread, as you say, across the rest? Did you find carbon in any of the blue flecks? A. No. Those, of course, that are adjacent to the black, those few places where they do come close together, then you have a mingling, but that black is from the ribbon on the other side, but the ones that are out in the clear, and there are a great number of them, I would say, out in the clear—by this I mean they are not jammed up against a fleck of black, black ink, and these showed no signs of carbon.

* * *

(2872) HOWARD M. HOLTZMANN, called as a witness, having been duly sworn, testified as follows:

Direct Examination by Mr. Nizer:

Q. Is it a fact that the first time you saw a copy of the Kabazi letter, P158, was in the spring of 1967? A. That is my best recollection, Mr. Nizer.

Q. And you never saw the oriignal of the Kabazi letter prior to June, 1969, when you testified at the deposition? A. That's my best recollection.

Mr. Nizer: That is all, sir.

Howard M. Holtzmann, for Defendant, Cross

The Court: Do you have any questions?

Mr. Greenspoon: No questions.

Mr. VanVoorhis: I will ask a couple of questions, yes, your Honor, if I may.

Cross Examination by Mr. VanVoorhis:

Q. You are, of course, a member of the firm of Holtzmann, Wise & Shephard? A. I am.

(2873) Q. Of which Mr. Deer is also a member? A. Yes, he is.

Q. Did you have any part prior to the spring of 1967 in the analysis or preparation of this case for trial?

* * *

A. I had no part in the Occidental matter of any sort prior to the spring of '67 and I didn't see any of the documents.

Mr. VanVoorhis: Thank you.

Mr. Nizer: No other questions.

The Court: One question: You say you didn't see the original until 1969. Where did you see the original?

The Witness: Your Honor, if I recall Mr. Nizer's question, he said I didn't see it prior to '69 when I gave my deposition.

The Court: Well, when did you see it for the first time?

The Witness: Your Honor, I really don't think I ever saw the original until it appeared here in court, (2874) and then I was simply—I have no recollection of ever having it in my hand.

(Witness excused)

* * *

(2875) Mr. Nizer: I will read from the deposition, page 3:

"Q. State your full name and present home address for the record, please? A. MARY LOUISE CULLEN, 24 Washington Park, Maplewood, New Jersey."

Mr. Greenspoon: Mr. Nizer, would you state the date the deposition was taken?

Mr. Nizer: Taken March 9, 1970.

"Q. Are you the private secretary of Mr. Charles Allen, Jr., Miss Cullen? A. Yes, sir.

"Q. How long have you been his private secretary? A. Since 1956.

"Q. Are you the only private secretary he had during this period? (2876) A. Yes, sir.

"Q. Is your salary paid by Allen & Company, the partnership or by Allen & Company, Inc., the corporation? A. For the last two years it's been by both.

"Q. You mean on various occasions the corporation pays and sometimes the partnership, or do you mean they split up? A. It's split.

"Q. How much for each? A. Fifty-fifty.

"Q. I see. You get two checks each week, is that it? A. We are paid in cash.

"Mr. Greenspoon: Weekly or monthly?

"A. Weekly. The partnership previous to that.

"Q. When were you first employed by the partnership, Allen & Company? A. 1953."

I go to page 7, from line 19 on page 4—

Mr. Greenspoon: I think you ought to read the last two questions.

Mr. Nizer: On what?

Mr. Greenspoon: That page, about her vacation in '65.

Mr. Nizer: All right. Line 19, at plaintiff's (2877) behest:

"Q. Did you have a vacation in 1965? A. No.

"Q. You were in the office at all times, you never took a vacation during that year, is that it? A. That's right, sir."

Now I go to page 7, line 2:

"Q. What are your duties and responsibilities as private secretary of Mr. Charles Allen? A. Well, dictation, filing, opening the mail. If he is out of the office, answering the phone.

"Q. Did you also place calls for him if he wanted to get anybody? A. No.

"Q. Or if he wanted to call abroad, did you give the instructions for it or make the call for him? A. No. Rarely. The operators do it.

"Q. Is that filtered through you, do you tell the operator to get the following call for Mr. Allen? A. Sometimes.

"Q. Now, you say you open the mail every morning? A. Yes.

"Q. And then you would hand that mail to Mr. Allen? A. Yes.

(2878) "Q. Would you look over the mail, read the substance of it before giving it to him so you could have some notion of it? A. Rarely. There is no time.

"Q. Pardon? A. Rarely. There is no time.

"Q. Did you ever do that? A. Sometimes.

"Q. Suppose a document arrives through the mail and it had a covering letter—you know what I mean by a covering letter, Miss Cullen, a letter that says, 'I am enclosing the following.' A. Yes.

"Q. Would you give both the document and the covering letter to Mr. Allen? Is that your practice, to give him the entire— A. Yes.

"Q. Did Mr. Allen ever instruct you to destroy any covering letter? A. No.

"Q. Now, you said that you tend to the filings of correspondence for Mr. Charles Allen, is that correct? A. Yes."

I would go to page 10, line 3:

(2879) "Q. Now, when Mr. Charles Allen was away from the office, you still attended to these duties of opening the mail and filing the mail, even though he was away? A. Yes.

"Q. Do you do the filing yourself when you file these? A. Yes.

"Q. And is the same procedure that you have just described followed with regard to the personal papers of Mr. Charles Allen, anything personal that he asks you to take care of? A. Yes.

"Q. Now, did Mr. Charles Allen through you or in this office maintain a file covering a person named Ferdinand Galic? A. Yes.

"Q. And did that file contain the correspondence between Mr. Galic and Mr. Charles Allen? A. Yes.

"Q. Would that file contain documents furnished to Mr. Allen by Mr. Galic? A. Yes.

"Q. Would that file also contain covering letters addressed to Mr. Allen by Mr. Galic? (2880) A. Yes.

"Q. Do you, for Mr. Allen, of course, also maintain a file for a person called Mr. Kabazi, Fahwad Kabazi? A. No.

"Q. Have you ever heard that name before? A. Yes.

"Q. Have you ever seen any correspondence between Mr. Kabazi and Mr. Charles Allen? A. I don't remember.

"Q. Did you ever see any correspondence between Mr. Kabazi and Mr. Galic? A. I don't remember.

"Q. You are not sure one way or the other, is that what you mean? A. Yes, sir.

"Q. I show you this letter from Kabazi to Galic, which has been marked here Plaintiff's Exhibit G-30"—now P159—"and ask you whether you ever saw the copy or the original of that letter? A. I just don't remember.

"Q. You don't remember one way or another, is that it? A. Yes.

"Q. That's what you mean—you don't know, or yes you don't know one way or the other, is that what you mean? (2881) A. Yes.

"Q. Do you know whether Mr. Galic ever sent a copy of that letter G-30"—now P159—"to Mr. Charles Allen? A. I don't know.

"Q. Do you recall receiving or seeing such a letter in 1967? A. I don't remember."

I go from there, which is page 12, line 11, to page 15, line 7—

Mr. Greenspoon: I think we ought to read, Mr. Nizer, what appears on page 14 between lines 6 and 16, or thereabouts—the whole page. I admit we asked for it, not you, but—

Mr. Nizer: You want me to read page 14, line 6?

Mr. Greenspoon: Start at line 3.

Mr. Nizer: All right, I will read at your request—

Mr. Greenspoon: Maybe you ought to start at the bottom of page 13, line 23.

Mr. Nizer: All right, reading from page 13, line 23, at plaintiff's request:

"Q. Does Mr. Charles Allen maintain a file with regard to a person by the name of Fox of the Wintershall Company? A. No.

(2882) "Q. Do you recall seeing any correspondence with the name Mr. Fox of the Wintershall Company? A. No, I don't recall it.

Mary Louise Cullen, E.B.T.

"Q. Does Mr. Charles Allen maintain a file through you concerning the affairs of Allen & Company, Inc., the corporation? A. No.

"Q. There is no file that you have that deals with the corporate matters rather than partnership matters? A. Well, yes, but it's my file for the corporation, not his.

"Q. Does he ever give you any documents to put in to that file? A. No, he doesn't have anything—no.

"Q. Has he ever called for any documents from that file for any purpose? A. No, sir.

"Q. Do you keep any records of the corporation? A. Yes, sir.

"Q. Does Mr. Charles Allen, so far as you know, participate in any matters involving the corporation of any kind, even consultation? A. Not to my knowledge."

Do you want me to read on?

(2883) Mr. Greenspoon: I think you were going to page 15 anyway, weren't you?

Mr. Nizer: I will skip 15 and I will go to page 47.

Mr. Greenspoon: From 15 to 47?

Mr. Nizer: That's right, line 15, page 47.

Mr. Greenspoon: Can you give us two minutes to trace you down?

Mr. Nizer: Yes.

Mr. Greenspoon: You are eliminating a lot of the material you designated?

Mr. Nizer: Yes. I am trying to cut things down. If there is anything you want to read, I will be glad to read.

(Pause)

Mr. Greenspoon: We would like to offer our third counter designation, line 9, page 20, to line 2 on page 21. I don't think you objected to it.

Mr. Nizer: I read, at your request, from page 20, line 9:

"Q. Did you ever type any letter from Charles Allen to Fahwad Kabazi? A. No.

"Q. Did you ever type a letter from Charles Allen (2884) to a German company called Wintershall? A. No.

"Q. Did you ever type a letter for Mr. Charles Allen to Ernest Denzel? A. No.

"Q. Did you ever type a letter for Mr. Charles Allen to Mr. Fox of Wintershall? A. No.

"Q. Did you ever type a letter from Charles Allen to Mr. Guido Arato? A. No.

"Q. Did you ever type a letter for Mr. Allen to Mr. Patasy, a New York attorney? A. No.

"Q. Does Mr. Charles Allen from time to time dictate memoranda to you? A. Yes, sir.

"Q. So far as you know, are you the only one that he dictates them too? A. Yes."

And she wrote in subsequently, "when I am at the office."

"Q. As his secretary? A. Yes.

(2885) "Q. On the average, how many memoranda does Mr. Charles Allen dictate to you each year, approximately? A. I just wouldn't know how to figure it out."

Mr. Greenspoon: That is as far as we designated.

Mr. Nizer: Well, I will read the next one:

"Q. Well, I know it's—I am asking for a rough approximation. Would you say dozens, would you say less than dozens, would you say hundreds? A. Hundreds."

I now go to page 47.

Mr. Greenspoon: Just a moment.

(Pause)

Mr. Greenspoon: 43 is our next designation.

We would like you to read our sixth designation, line 8, page 43, to line 9 on page 44.

Mr. Nizer:

"Q. When Mr. Allen made calls to the outside, was the practice the same as incoming, sometimes he would give it to you and sometimes he would go directly to the switchboard? A. Yes, sir.

"Q. Did he ever in the past five years make any telephone calls through you to any representative of the Wintershall Company? A. I don't remember.

(2886) "Q. You don't know one way or the other, you don't recall? A. I don't remember that name at all. I don't know that name at all.

"Q. Do you know whether during that five year period, do you have any recollection whether Mr. Allen made any telephone calls to Fahwad Kabazi? A. No.

"Q. Or from Kabazi, any incoming calls from Kabazi to Mr. Charles Allen? A. No.

"Q. By 'No' you mean you don't remember or there were none? A. I don't remember.

"Q. Do you remember whether there were any telephone calls to or from Charles Allen and Guido Arata? A. I don't remember any.

"Q. Did you ever see any correspondence between Mr. Herbert Allen and Mr. Kabazi, Herbert Allen, not Charles, and Mr. Kabazi? A. I don't remember.

"Q. One way or the other, is that what you mean? A. Yes, sir.

"Q. Did you ever see any correspondence between (2887) Mr. Herbert Allen and Mr. Arata? A. I don't remember.

"Q. One way or the other, is that what you mean? A. Yes, sir."

Mr. Greenspoon: That is as far as we ask.

Mr. Nizer: I will read it:

"Q. Did you ever see any correspondence between Herbert Allen and Mr. Ferdinand Galic? A. I don't remember.

"Q. One way or the other? A. Yes.

"Q. That is what you mean? A. Yes, sir."

I go now to page 47, line 15:

"Q. Did Mr. Herbert Allen ever ask you in October of 1965 to place a telephone call to Mr. Galic in Paris? A. I can't remember.

"Q. You have no recollection that he did so? A. No.

"Q. Did Mr. Charles Allen ever ask you in October, 1965 to place a telephone call to Mr. Galic in Paris? A. I can't remember.

"Q. You have no recollection that he did so? A. No, sir.

(2887a) "Q. Have you any recollection that he asked the operator not you, but the telephone operator to make that call to Paris in October, 1965? A. I can't remember.

"Q. You have no recollection that as far as you know he ever did that, is that what you mean? A. Yes, I can't remember it.

(2888) Mr. VanVoorhis: All right.

Mr. Nizer: Reading from Page 52, Line 6.

"Q. Is there any handwriting on that cablegram which is P163, which you recognize the author of? A. Yes. This is mine.

"Q. Will you read it, please. A. '42-B and 44, 44 not very good in Galic's opinion.'

"Q. Now, you wrote that at the time immediately after Mr.—withdrawn. When in connection with the date of

that cablegram did you write those words on there? A. I don't remember it at all.

"Q. Who instructed you to put that writing on? A. I don't know.

"Q. Do you recall whether you did that of your own notion or somebody told you to do it? A. I don't remember.

"Q. Would you know what 42 and 44 stands for? A. No.

"Q. Then would that indicate to you that somebody told you to put that on? A. Yes.

"Q. Now, would you search your memory and tell us who? (2889) A. I don't know.

"Q. You don't even surmise that it would be Mr. Charles __"

Mr. VanVoorhis: I think it is "couldn't."

Mr. Greenspoon: That question wasn't answered, Mr. Nizer. You might as well skip it.

Mr. Nizer: Yes.

"Q. Wouldn't it refresh your recollection from seeing those words on it, on a cable addressed to Mr. Charles Allen, that it was he that told you to put those words on? A. I just don't remember.

"Q. And you don't remember whether Mr. Herbert Allen told you to do it? A. No.

"Q. So even though you wrote the words '42B, 44, 44 not very good in Galic's opinion,' it still doesn't refresh your recollection in the slightest as to how it came about that you put those words on that cablegram, is that right? A. That's right, I just don't remember.

"Q. And were those words on the cablegram at the time you filed it, in your file? A. I just don't remember anything about it.

"Q. Did Mr. Galic give this information to you (2890) that is written on here, 'In Galic's opinion 44' was it Mr.

Galic who told you about it, does that refresh your recollection? A. I don't know.

"Q. And you took the message down? A. I don't remember.

"Q. After receiving Exhibit P163, did Mr. Charles Allen, to your recollection, make a telephone call to Mr. Galic in Paris? A. I don't remember it.

"Q. I am asking you about a telephone call. Do you remember that he made any telephone call to Mr. Charles Allen—do you remember whether he made any telephone call to Mr. Galic in Paris? A. I don't remember.

"Q. You have no knowledge that he did one way or the other? A. No.

"Q. Now, I call your attention to the fact that in Exhibit P163, the last two words before the signature Galic says 'letter follows.' A. Yes.

"Q. You would take that to mean—"

(2891) Mr. Greenspoon: That is not answered.

Mr. Nizer: I will skip.

"Q. Would the words 'letter follows'—"

Mr. Greenspoon: That is not answered either.

"Q. Do you refuse to answer that question?

Mr. Nizer: Well, I better read why it wasn't answered. Let me read back at Line 4.

"Q. You would take that to mean that in addition to the cablegram Mr. Galic is forwarding a letter, is that right?"

"Mr. Greenspoon: I object to the form of the question. I suggest to the witness she could not construe that telegram.

"Q. Would the words 'letter follows' mean to you as Mr. Charles Allen's secretary that Mr. Galic was sending a letter that would follow this cablegram?

"Mr. Greenspoon: I object to the question and I suggest to the witness that she is not competent to answer it, and consequently, should not answer it.

"Q. Do you refuse to answer that question? A. I refuse to answer.

"Mr. Nizer: I will submit it to the Court.

"Q. Now, were you instructed before coming here (2892) today by Mr. Greenspoon or any other attorney that if he suggests that you don't answer that you refuse to answer? A. Yes, sir."

Go to 65, Line 6.

Mr. Greenspoon: What page are you going to?

Mr. Nizer: 65, Line 6.

Mr. VanVoorhis: Page 64, Line 11 seems to introduce the subject.

Mr. Nizer: All right, I will read from there, 64, Line 11.

"Q. Did you ever see Dr. Armand Hammer in the office of Mr. Charles Allen? A. I think so.

"Q. On how many occasions? A. Just very vaguely once maybe.

"Q. Do you know what year that would be, can you make your best recollection? A. I don't know.

"Q. Would it have been in '65 or '66 or '67? A. I would only be guessing, I don't remember.

"Q. Was Herbert Allen present on the occasion that you say you do recall Dr. Hammer was present at? A. I don't remember.

(2893) "Q. Was Charles Allen in the office at the time that you say Dr. Hammer was there? A. I don't remember.

"Q. Do you remember Dr. Hammer being there at all in Charles Allen's office? A. No."

Mr. Nizer: Now I will read what I was going to read on Page 65.

"Q. Did you ever place a telephone call abroad to Mr. Galic on any occasion when Dr. Hammer was in Charles Allen's office, do you have any recollection of such a thing? A. No, sir."

I skip to Line 21 or 20, on the same page.

"Q. I will have it either way, but tell me what it was. I thought you told me that you have no recollection that he was ever there or have you? A. I think he was there once, but I don't recall when.

"Q. On that occasion, if you think so,—is this a guess or do you have a recollection? A. It's a vague recollection of his being there and seeing him."

I skip to Line 16, to overlook the colloquy.

(2894) "Q. On any occasion in which you have a vague recollection that Dr. Hammer was in the office of the partnership, do you recall Mr. Charles Allen making a call to Europe? A. No, sir.

"Q. More specifically, to Mr. Galic in Europe? A. No, sir.

"Q. Do you know a Mr. Herbert L. Stern? A. Yes.

"Q. Who is Mr. Stern? A. He was general office manager and financial vice-president of the corporation.

"Q. Was Mr. Stern ever employed by Allen & Company, the partnership, so far as you know? A. I don't know.

"Q. You don't know one way or the other? A. I don't know his employment arrangements.

"Q. Not arrangement. For whom was he working? Do you know whether he was working for, at any time, Charles Allen, the partnership? A. I think so.

"Q. Was Mr. Stern already employed by Allen & Company, the partnership, at the time you became private secretary (2895) to Mr. Charles Allen? A. Yes.

"Q. Did Mr. Stern work in close association with Mr. Charles Allen? A. I think so.

"Q. Would Mr. Charles Allen supervise the work of Mr. Stern, as a superior, I mean? A. I think so."

I go to 68, Line 16.

Mr. Greenspoon: I think you ought to start Line 6, Mr. Nizer.

Mr. Nizer: All right, I will, at your request. Line 6, Page 68.

"Q. If there were any papers to be signed, I am not asking you on any specific instance, because I think you keep telling me you don't remember, but if any documents were to be signed for the partnership, so far as you know, would Mr. Stern check with Mr. Charles Allen before signing such papers as his superior? A. I don't know what Mr. Stern would do.

"Q. From your observation of both of them and their positions in the company, was Mr. Allen the superior of Mr. Stern? (2896) A. Yes.

"Q. And would Mr. Stern come to Mr. Allen if there was any question of policy or decision to be made, would he consult with Mr. Allen, would Mr. Stern consult with Mr. Allen, to your recollection? A. I think so."

Mr. Nizer: I go to 71 from there.

Mr. Greenspoon: Why don't you read the next two while you are at it.

"Q. Did Charles Allen ever discussion Occidental Petroleum with Mr. Stern in your presence? A. I don't remember.

"Q. Did Mr. Charles Allen have any discussion with Mr. Stern in your presence with regard to oil concessions in Libya? A. I don't remember any."

Mr. Nizer: Now I go to Page 71, Line 9.

Mr. Greenspoon: Why don't we finish 69, Mr. Nizer, those last few questions. There aren't too many.

Mr. Nizer: You want me to read from Line 11 on 69?

Mr. Greenspoon: Yes.

"Q. Would you say that Mr. Charles Allen did not have any discussions with Mr. Stern in your presence (2897) with regard to questionnaires that were to be filed by Allen & Company, as an underwriter? A. I don't remember.

"Q. Did Mr. Charles Allen ever request you to prepare any underwriter's questionnaire for Allen & Company? A. No.

"Q. Have you ever seen an underwriter's questionnaire? A. I don't think so."

Mr. Nizer: Now I go to Page 71 unless you want something else, Line 9.

Mr. Greenspoon: All right.

"Q. Did you ever hear of a company called Klehe & Company? A. Yes."

Mr. Nizer: Skipping down to Line 20:

"Q. Who is Charles Torem? A. I don't know. He has something to do with Klehe & Company, but I don't know his position. I think he is an attorney."

Mr. Nizer: That is all.

Mr. Greenspoon: Do you mind, we have a few we would like to read.

Mr. Nizer: Tell me, which one?

(2898) Mr. Greenspoon: Line 4 on Page 71 to Line 8.

Mr. VanVoorhis: May we read them right here?

Mr. Nizer: Go ahead.

(Mr. VanVoorhis reading)

"Q. Do you recall whether Mr. Stern ever had any discussions with Mr. Charles Allen, not the substance of it, but any discussions with regard to this questionnaire which is Exhibit D18? A. I don't remember hearing anything."

* * *

(2907) The Court: There is just one item that I would like to refer to and ask you about with respect to the motion just made, and that relates to the second defense. I take it that really refers to the defendant's alleged claim that Galic had interceded on behalf of or had represented Wintershal, the German company that succeeded in obtaining one of the concessions, I believe block 42—

Mr. Pollio: 47, your Honor.

The Court: What evidence is there in the case to support that claim? As I recall, whatever testimony there is, it is all of a negative nature. It is true that the trier of the fact is not bound to accept a denial of a witness, but in this instance what is the basis upon which you should guess that that is a defense and that the court should consider it?

Mr. Nizer: Yes, your Honor, and on affirmative evidence, not merely negative. Let me call attention to just a few items. Exhibit G42, written by Galic to DeRovin, has this sentence in it: "I asked him"—

(2908) Mr. VanVoorhis: Which number is that?

Mr. Nizer: It is now D48. Referring to Khogia, in the last paragraph: "I asked him to cable me whether his brother-in-law," and that is, of course, Kabazi, "will accept the German group which is ready to make the transaction." That letter is

dated March 9, 1965, and, as your Honor knows, that is long before any awards.

There was a direct reference in the handwriting of the man who is supposed to turn it up for us, that is, that he is consulting as to whether he will accept the German group, and this clearly, in the context of this letter, refers to oil concessions but if there were any doubt of that, it is further demonstrated by affirmative testimony at page 2071 of the record, reading Galic's deposition:

"'Q. Who did you ask to check'"—well, let me read a little higher, line 2:

"'Q. My question is in March, 1965, did you request anyone to check with the Libyan Government as to whether it would be willing to accept a German group for an oil concession. That is my question. A. Yes.

"'Q. You did? A. Yes.

(2909) "'Q. Who did you ask in the German—withdrawn. Who did you ask to check with the Libyan Government as to whether it would be willing to accept a German group for an oil concession? A. Myself.

"'Q. You didn't ask anybody else to do it, you did it yourself? A. Yes.

"'Q. And who did you talk to? A. I ask Kabazi.

"'Q. Do you know a man called W. H. Fox?'"

Now, that is with Wintershal, it has been established, the chief executive there, I believe.

"'A. Yes.

"'Q. Who is he? A. He is the administrator of the Wintershal.

"'Q. That is one of the German companies? A. Yes.

"'Q. Is he sometimes called W. H. Pitt-Fox? A. I don't know.

"'Q. When did you meet Fox, W. H. Fox of Wintershal Company for the first time? A. Oh, before any con-

cession and everything, we was talking about tank shipping.'"

(2910) That is, before he discussed with him oil—

The Court: I remember that, but he claimed that the discussion was not with respect to oil concessions.

Mr. Nizer: No, but it is clear.

The Court: I think you have answered—

Mr. Nizer: I have more on that. I will mention the numbers for your Honor's consideration, 2253, 2254 and 2257 and up through 2259. There is definite reference to the contacting of Wintershal for oil concessions by the very man who is supposed to be exclusively, under his contract, working for us, and before the awards were, of course, granted.

Mr. VanVoorhis: Your Honor, there isn't anything in that which indicates that Galic was working for or in the employ or in the service of Wintershal. It was a part of his function to keep track of competition and this question at 2071, which was whether he requested anyone to check with the Libyan Government as to whether it would be willing to accept the German group for an oil concession by no means indicates that he was working for Wintershal or that it was anything more than a quest for information.

The Court: That is one inference that can be drawn, but all Mr. Nizer is saying, in response to my inquiry, is that this is an issue of fact and the trier of (2911) the fact may draw an inference that this, taken together with other evidence in the case, is sufficient to show that Galic was also working on behalf of another company in opposition to the interests of the defendant.

Now, he has answered my question. It means I am making no factual determination—

Mr. VanVoorhis: We respectfully submit that evidence is not susceptible of that construction.

The Court: You are arguing the merits of it now and I wouldn't think that at this point in the case, where you are making a motion for a dismissal of defenses, that I ought to point out that I am not making a fact determination, that your motion was directed to me as a matter of law—

Mr. VanVoorhis: That's right.

The Court: —to take these defenses from me as a judge of the fact. Mr. Nizer responded that there is sufficient there to require the denial of your motion as a matter of law and leave it to the court as a trier of fact, where I put on my other hat to decide it. That is really what he said, but you are trying to argue the merits of it and I am saying there is no point in arguing it now.

Mr. VanVoorhis: I am only arguing the merits of whether or not it is a question of law.

(2912) The Court: Oh, I would think it is. If the evidence supports a finding that Galic contrary to his alleged commitment to turn up concessions for the defendant was in fact engaged in furthering the interests of a competitor, I would regard that as a defense.

Mr. VanVoorhis: We are not disputing that.

* * *

(2931) Mr. Nizer: May I say to your Honor and to counsel our witness conceded that there were changes, he so testified after '64, as you are about to demonstrate through this very elaborate means, and if all you are trying (2932) to eliminate is that this typewriter was in existence at least before '66, our witness so found and you don't have to go through all of this. Now anything else you want, I am not trying to limit you, of course, if you want to demonstrate other things about the Scotland and so on, but

all this is conceded and the fact that the typewriter existed before '66 of course doesn't establish when it was typed, so that I think we are on a very lengthy exercise that is not even in dispute.

The Court: I think I must allow counsel for the plaintiff to proceed in his own manner, unless he is prepared to take the concession.

Mr. VanVoorhis: We are trying to do it in an orderly manner, your Honor.

The Court: Do it whatever way you think it is best in your client's interest.

Mr. Nizer: I am pointing out to counsel in trying to impose on his order of proof, that this point is not in controversy. We don't claim that this typewriter wasn't in existence until after February 16, '66. So if that is the demonstration, you don't have to go through it. That is all I am pointing out.

* * *

(2973) The Court: I am going to repeat what I said yesterday about this whole subject: I think there has been much over-emphasis and indeed exaggeration about the Exhibit 158. Actually, there are two precise issues that revolve about that letter and I think both counsel have exaggerated the importance of that letter.

Mr. VanVoorhis: Your Honor, as to the thing you just said, I am not sure that you are acquainted with the full pre-trial history of his situation, and this letter was attacked bitterly and vehemently and aspersions cast on Mr. Greenspoon and on the Tytells with regard to the material on the back of the document, and an enormous amount of importance was attributed to this by the other side.

The Court: You made that point yesterday and I (2974) will go so far as to say there appears to

be no question that the letter bears the signature of Kabazi and there is a question, without regard to whether it was written on an Olivetti typewriter or any typewriter, as to the circumstances under which it was sent, when it was sent and whether or not there was a reason for it being sent, and that is not the case, no matter what it was written on and no matter what typewriter was used. The answer to that depends on all the surrounding facts and circumstances and all the testimony in the case and that is why I say that I think this is an issue that has just run away with the lawyers in the case.

* * *

(2978) The Court: I am going to repeat, with due respect to you, Judge VanVoorhis, Mr. Greenspoon, your associate counsel, and to Mr. Nizer: From where I sit, close to the end of five weeks of trial, which has to me rather sharply defined issues, it is my humble belief that all of you have over-played and exaggerated the importance of this letter in terms of the case. I am going to repeat that there is a question that has been raised based on evidence as to whether or not in fact the letter was sent the day Mr. Kabazi said he sent it and the circumstances under which he sent it and if there are any reasons why he sent it. So what difference does it make, really, whether it was typed on one typewriter or another typewriter?

As I understand it, nobody is disputing that it is his signature. There is a dispute as to whether he mailed it on that day.

Now, you can go on to a fare thee well with this and I have so much, I will take whatever else there is on the subject, but I am going to remind counsel that there are very specific, definite issues in the

case, as I see them, and I think I see them quite clearly.

(2979) Maybe you gentlemen can't see the forest for the trees, you have lived with the case so long.

I should tell you, you said something a moment ago about the difficulty of trying a case of this kind and being completely absorbed in it, of course I am completely absorbed in it, as well as carrying out other work in addition, and I should tell you in addition to going over the testimony each night, and that means that as the trial progressed I not only listened to every word of the testimony but each night went over it again, and I have already begun a word-by-word study of the evidence again, and so all of us are absorbed in the case.

* * *

(3056) Q. Now, Mrs. Tytell, you told us today that your conclusion was that P158 is typewritten either on an Olivetti or a Facit, is that right? A. I said it could have been typewritten either on an Olivetti, standard machine, or a Facit.

Q. And you eliminate of course a Hermes? A. That was eliminated at the time that I showed you a letter in May of 1972 at which time the factory in Switzerland had written to us and you had seen the original letter of that, written to the factory in New York, that is, that they have not made a 2.54 typewriter, and I think that letter may have said that they may be contemplating (3057) that in the future.

Q. So that the simpler and direct answer to my question would have been yes, right? You had eliminated Hermes? A. Right.

Q. And Hermes is a Swiss made machine, isn't it? A. Yes, it is.

Q. And what make machine is a Facit, please? A. It is made in Sweden.

* * *

(3058) Q. My question was, during the same period after 1961, were there not typewriter manufacturers using a pica type who did not have a key for the numeral number one but instead only provided a lower case "l" if anyone wanted to use a one, right? A. I am sure that that is so.

Q. That is a direct answer. I really appreciate it. Thank you.

Now look at P158, an enlargement, which will (3058) make it easier for you, and tell me whether it isn't a fact that whenever numeral one was used, a lower case "l" was typed for the use of number one? A. Yes.

Q. And you find that on at least four times there was a need to use the number one and each time the lower case "l" is used for it, isn't that a fact? A. In the instances where a one is required, the lower case "l" is used.

Q. The answer again is yes, that there were four of them and the lower "l" was used. Will you answer directly, please.

Mr. VanVoorhis: She has.

A. The reason I answered that way, Mr. Nizer, is because I am trying to see if there are four.

Q. Oh, well maybe I can help you. 16 and the date, one six, do you see the one, lower "l" 41, and "Rue" for street, one "l" is an "l", Paragraph 16? A. Yes, there are four.

Q. Now, did the Facit machines manufactured from 1961 have a separate key for the number one, not a lower "l" in other words, in addition to a lower "l" did it have a number one key? (3060) A. I don't believe the Facit portable did.

Q. Do you know? Are you guessing? Have you knowledge? A. I can readily verify it but at the moment—

Q. Do you recall? A. Not from my own recollection, at this moment. I could refer to my records.

Q. You limited that reply of not knowing about portables, do you know whether it is so on a non-portable or

don't you? A. It would more likely be that the numeral one in the keyboard would have been placed on the office model machine.

* * *

(3065) Q. You say that the vertical spacing on the Kabazi letter, P158, is 4.17 millimeters, don't you? A. Well, I don't recall if I said that, but Mr. Hilton did say that.

Q. Do you agree with it? A. It is approximately that. I think it might be just a little bit over.

(3066) Q. A little over. And of course on your assumption that there was a carbon, and then a copy behind the carbon, which would mean that there were at least two more sheets of paper, the 4.17 registers three sheets of paper rather than just one, doesn't it, on your assumption? A. That is correct, sir.

Q. So that the only way you say that the 4.25 millimeter vertical spacing on the British Olivetti could be claimed to be the machine which typed the Kabazi letter with 4.17 vertical spacing is if one shaved down, as you described it, the platen or there was a great difference in tolerance, right? A. That is not a great difference in tolerance.

Q. Or if there was a difference in tolerance? Do you want to eliminate "tolerance" in my question? Just if you shaved down the platen, would that be better? A. That is one way, sir.

Q. All right. Now, only by shaving the platen then could you make the 4.17 equivalent to the 4.25 millimeter spacing, isn't that correct? A. No, it is not the only way.

Q. The other way is what? A. Is if the platen were dried out.

(3067) Q. Dried out— A. And if also you were to check the tolerances on the ratchet itself, and the parts comprised in this total typewriter.

Q. Now when you say "dried out" how long, in your experience as an expert, about would it take for a platen

to dry out, even in hot weather? Have you any opinion? A. It might dry out within a year or maybe even less, I don't know personally having not experimented with platens in torrid climate.

Q. The answer is really you don't know, do you? A. I do know that the platens dry out. I know that.

Q. I am asking you for the number of years it would take for a platen to dry out. A. It would not necessarily take years, sir.

Q. You don't know that one way or the other? A. I know that a platen could be dried out or harden within a year.

Q. You haven't the slightest knowledge, have you, that anyone shaved the typewriter on which P158, the roller, the platen on the typewriter that produced P158, have you, of your knowledge? A. I do not.

(3068) Q. You haven't the slightest knowledge whether that platen had dried out of the machine that typed 158, have you? A. No, I do not.

Q. And you haven't the slightest knowledge of whether there wasn't a tolerance equivalent which changed the 4.17 to 4.25 to your knowledge—4.25 to 4.17? A. No, I do not know the tolerances of the typewriter that produced P158.

* * *

(3071) Q. You have testified that the Italian Olivetti had commenced using 2.54 horizontal spacing some time in 1967 or '68? A. That's right.

Q. Is that correct? A. Yes.

Q. You have also testified that the Kabazi letter, which is P158, has a 2.54 horizontal spacing, is that correct? A. That is correct.

Q. Assuming that the machine which typed the Kabazi letter, P158, was manufactured by Italian Olivetti, it would follow, on that assumption, would it not, that the machine was not in existence in February, 1966? A. It would be

impossible for Italian Olivetti to manufacture a Ransmayer-Rodrian Pica No. 1 in 1968 because they didn't use Ransmayer type then.

* * *

(3072) Q. I will go on, Mrs. Tytell.

You have testified this morning with respect to discoloration on back of P158, that there are light blue flecks, is that right? A. On what, sir?

Q. On P158, the back. A. Yes, sir. I said there were lighter and I believe I used the word "brighter" too.

(3079) Q. All right, then I won't stop to do it. Before you gave your original report in this case to Mr. Greenspoon, you made a draft of it, didn't you? A. Yes, sir.

Q. Did you type that draft yourself, personally? A. I believe I did.

Q. Was your husband, who collaborates with you in this work, present? A. I am not sure if he was standing over me when I was typing it, but he certainly does and did collaborate with me in the preparation—

Q. Did you both collaborate in writing the report, both of you? A. Yes, sir.

Q. Then after you wrote the draft of your report, which is called D31 for identification, at the deposition, then you prepared from it, you transformed that into a final report, which at the deposition was called Defendant's Exhibit 6 for identification? We are talking about documents you are familiar with, is that right? A. I do remember them.

Q. Draft, 31 for identification; final report at that time, Defendant's Exhibit 6.

When you wrote your draft, under a certain section, (3080) paragraph 4, headed "typewriter identification," subparagraph 6, in your final report that paragraph reads as follows, and I ask you if this is correct; "Further analysis"— A. Excuse me. May I get a copy of it?

Q. I think that would be helpful.

Mr. Nizer: Do you have an extra copy for the lady?

A. I have one here, if I may get it.

Q. Yes, take it out, please, and your draft. A. I don't have the draft. I have the final report.

Q. I will show it to you. If counsel hasn't got one, I will stand here and show it to you.

Now, in your final report at that time, Exhibit 6 for identification—do you have that? A. Yes.

Q. Under paragraph 6, "typewriter identification," subparagraph 6, you wrote as follows, you typed as follows:

"Further analysis of the vertical spacing in the questioned document may eliminate the Japanese and Holland manufacturers listed above and provide evidence of a carbon copy."

That was the final. Now, the words "provide evidence of a carbon copy" was written in in ink on your (3081) draft, wasn't it? A. If I may see it? I don't remember that.

Q. Yes. You see after the typewriting—is that your handwriting? A. Yes, it is.

Q. And you added the words, "and provide evidence of a carbon copy." Now, what has that clause, "and provide evidence of a carbon copy," to do with the subject of typewriter identification? Does it have anything to do with it? A. Yes.

Q. What has it to do with it? A. It deals with the vertical spacing.

Q. Turning now to paragraph Roman V of your final report, Exhibit 6, you had other findings, subparagraph 2, your final report:

"The appearance of the questioned document, front and back, is consistent with the preparation of a carbon copy." Do you see that? A. I remember that sentence, but I am looking for it in the report. What page is that?

P. Tytell, Cross

Q. "Other findings," subparagraph 2.

Mr. Greenspoon: Page 5.

A. Yes, it is the second sentence in that paragraph. (3082) Q. When you had the draft of that same paragraph, you did not contain the phrase "front and back," did you? You wrote that in later? A. May I see it? Perhaps that is so.

Q. Well, look at the draft. A. Yes.

Q. You wrote it in? A. That's right, I did.

Q. And the fact is that you have testified, haven't you, that you did not examine the front of P158 to determine whether there was a carbon copy made, did you, even though you wrote those words in? That is a fact, isn't it? A. I said that I didn't remember seeing any blue flecks on the front of P158.

Q. No. Were you asked the following question:

"Q. Did you find any discoloration whatsoever on the face of G30?"

That is P158.

"A. When you say the face, the ribbon copy part?
"Q. Yes, the front"—

Mr. VanVoorhis: What page is that?
Mr. Nizer: 222, line 20.

Q. Continuing:

"Q. Yes, the front. (3083) A. I did not examine that side of the sheet for that purpose, just as to the type style is the only thing that I examined that for."

Did you make that answer? A. Yes.

Q. Does that refresh your recollection that you never examined the front of P158 to determine whether a carbon copy was made? That was a correct answer, wasn't it? A. It probably was a correct answer. The time differ-

ence between the date of the report is December, 1970, I believe, as compared with May, 1972.

Q. Yes? A. And the answers that I gave you were as clear as I could call from my recollection.

Q. When you wrote in "front and back," in ink, that was incorrect, as you know now? You never examined the front to determine a carbon copy answer, did you? A. Well, the evidence for the carbon copy, if any evidence is present, would come from the back.

Q. Now, you have a portion of your report which says "Conclusion," and in your draft, your second conclusion, as originally typed—that is Exhibit 31, the following sentence appears:

(3084) "There are questionable features associated with the printed letterhead and possible preparation of a carbon copy."

Isn't that the way it read originally, "There are questionable features associated with the printed letterhead and possible preparation of a carbon copy"? A. That was a typographical omission.

Q. Did it read that way originally? A. Of course, because it was a typographical omission.

Q. In your final report you inserted the word "No"— A. I inserted the word "No" in the draft.

Q. Then you wrote in—

> Mr. VanVoorhis: Please let her answer. If you are going to question her, let her answer, please.

Q. Did you not after having typed "There were questionable features" then put in in writing "No"? A. That is correct.

Q. Did you also retype the word "possible" to make it "probable" in the final report? A. Yes.

Q. That was not typographical error? A. No.

(3085) Q. When you put in your final conclusion you reversed what you originally had, no matter what your

explanation is at this moment, from reading "There are questionable features" to say "There are no questionable features" and changed the language so that it read as follows, "There are no questionable features associated with the printed letterhead and the probable preparation of a carbon copy"? Is that the way you finally changed it? A. Yes.

The Court: Is that the reference that you make to an original reference contained in the report—is it December 28, 1970? I understood that you sent two reports.

Mr. Nizer: That's right. There was a supplemental one. This is the first.

Mr. VanVoorhis: This, your Honor, is a draft of the December 28, 1970, report. It contains ever so many errors in typing and corrections of the draft, and the final draft of this report is the 28th of December, 1970, report. What Mr. Nizer is talking about is the notes which were put together in the form of a preliminary draft before she made it.

Q. Between the time that you prepared Exhibit 31, the draft, and the time that Exhibit 6 was typed, and that is the final copy, did you discuss Exhibit 31 with (3086) the attorney who engaged you? A. No, sir.

Q. When I asked you that question on the deposition, didn't you answer "I don't recall"?

Mr. Greenspoon: I think we ought to have the question and answer read.

Q. Volume 2, page 265, lines 4 to 6:

"Q. Had you ever discussed with Mr. Greenspoon the draft of your report? A. I don't recall."

Did you make that answer then? A. I may have.

Q. You may have? You think that was a typographical error? A. No.

P. Tytell, Cross

Q. When you said "No" now, what made you more positive than you were at the time a few years ago when you testified? A. Because at the time that I testified I am certain that I did not discuss it with Mr. Greenspoon and I believe Mr. Nizer, you then continued to ask me about when I delivered the report, and so on, and I recall that I had called Miss Stover or Mr. Greenspoon's office and made an appointment to meet with Mr. Greenspoon and deliver (3087) the report, and I had never discussed this draft with him from the time that it was prepared by me on December 24th and typed by the typist on December 28th, and I believe that was the very day, that evening, that it was delivered to Mr. Greenspoon in person.

Q. Well, you referred to the instructions which you received when you undertook this task of being an expert in this case. Those instructions came in a letter, didn't they, to you? A. I believe so.

Q. A letter from Mr. Greenspoon? A. Yes.

Q. And that letter, dated October 20, 1970—withdra[illegible]—you have described here the instructions you got—well, I won't review it.

You described those instructions here, what your task was, didn't you, at the trial here? A. I think so.

Q. Now, I call your attention to a letter of instruction, October 20, 1970, from Mr. Greenspoon: "I should like to point out that the man who signed the February 16, 1966, document testified that he made a carbon of it and that in all likelihood it was typed on a machine made by Olivetti. I am of course interested in (3088) making sure that Mr. Kabazi's testimony cannot be impeached from the questioned document or otherwise."

Was that the instruction you got at that time and the task you undertook, to make sure it couldn't be impeached? A. I do not interpret anything there as an instruction.

P. Tytell, Re-direct

Mr. Greenspoon: I think we ought to put the whole letter in, your Honor. I object to this reading a misleading reference from a letter.

Mr. Nizer: If there is anything else that explains it, I wouldn't object, but I—

Mr. Greenspoon: I think the letter should go in evidence, and I so offer it.

Mr. Nizer: No objection.

(Plaintiff's Exhibit P239 received in evidence.)

* * *

(3096) Q. And that was what? A. That was the numeral 3. This strike off illustrated that the flat top numeral 3 was used in the manufacture of an Olivetti typewriter in Italy in 1958.

Q. And was in the type font at that time, is that correct? A. And was in the type font that produced this particular document from the particular typewriter.

Q. Not that the whole type font was the same as that in existence? A. No, it was only—

Q. From the typewriter that wrote this letter.

The Court: As I understand it at least from 1958 that numeral 3 with the flat top had been produced on some Olivetti typewriters.

Q. Is that what you meant to say? A. That is what I see evidence of, sir.

The Court: What is your testimony about that? I want to understand the significance of it.

(3097) The Witness: Well, on, I think it was September 12th, your Honor—

The Court: Of what year?

The Witness: Of last month, this year, Mr. Greenspoon's office sent to me a copy of Mr. Hilton's report. Up to that time, sir, I in fact had been told by Mr. Greenspoon's secretary when trial was nearing that she didn't think I needed to do any additional preparation because they

didn't know if they were calling me as a witness, and then on September 12th, I think it was, I received a copy of Mr. Hilton's report and was contacted by Mr. Greenspoon's office in connection with this matter, which all of a sudden became reactivated.

Q. Now, would you mind answering the Judge's question just as he asked it? May I ask you please to read back the question which his Honor asked.

(Question read.)

Q. Can you answer that question yes or no? A. Certainly this strikeoff gives evidence of that and I was explaining why I made special note of the flat top 3 here in this court, because I understand from that report it was alleged that they never had a flat top 3.

The Court: No, but I am trying to get your (3098) judgment about it, and you keep going back to the opinion of other persons and information that you had. Evidently two questions have been raised about this letter. One, was it typed on an Olivetti machine?

The Witness: Or a Facit.

The Court: No, the original question was, was it typed on an Olivetti machine. And one witness has testified, Mr. Hilton, in his opinion it was not typed on an Olivetti machine, and one of the reasons he gave, quite correctly, was because of the use of the flat top 3.

Your testimony is that in your opinion it was typed on an Olivetti machine, is that correct?

The Witness: It could have been typed on an Olivetti machine.

The Court: It could have been.

The Witness: Yes, sir.

The Court: Now, what is the significance of the answer you last gave to Judge VanVoorhis with respect to the flat top 3 and the manufacturer of the font containing that prior to 1964, as you put it, in 1958, I believe, or '57.

The Witness: The date of that.

The Court: In terms of your judgment, what significance do you attach?

(3099) A. I had in my initial report not excluded the Olivetti because my information at that time was, as it is now, that Olivetti did produce typewriters with the flat top 3.

The Court: Then what you are saying, if I understand you, is that this confirms your judgment?

The Witness: Yes.

The Court: Because you believe you have evidence that Olivetti did use a flat top 3 prior to 1964?

The Witness: That is correct, sir.

The Court: And you fixed the date as to when it came to your attention that it was used at least as far back as 1958?

The Witness: That is correct.

The Court: Now, do I understand you?

The Witness: Yes, your Honor.

The Court: Now the other issue that has been projected into this letter of February 16 is whether or not a carbon copy was made of Plaintiff's Exhibit 158, and your opinion is that a carbon copy was made? Are you making an affirmative statement that it was made or that it could have been made?

The Witness: That it could have been made and that it is consistent with original documents that is (3100) known to have carbon copy using them as standards of comparison.

The Court: That is based on your examination as you have testified to with respect to the back of Plaintiff's Exhibit 158, and the coloration and your opinion, some of the coloration is due—let me use the word—of the take off of a carbon sheet that was used?

The Witness: Yes.

The Court: And that is the basis on which you give your answer?

The Witness: Yes, sir.

* * *

(3101) By Mr. Nizer:

Q. And of course you cannot testify that the Kabazi letter was typed on an Olivetti, it could have been typed on machines that were not Olivettis, is that not so? A. Only one other.

Q. What is the other? A. Facit.

Q. All right, no other machine that has Ransmayer-Rodrian type could have typed P158, only the Facit, is that your opinion? A. I am dealing with all of the machines—

Q. Answer my question first before you tell me what you are dealing with and then I may accept your answer. Just answer my question. No other machine— A. There has—

(3102) Q. Listen to my question first. No other machine that has Ransmayer—Rodrian type could have typed P158 except a Facit or Olivetti, is that your answer, just answer that. A. It would have to have more than Ransmayer-Rodrian type. It would have to have all of the other features in combination.

Q. Whatever you want to insert in your mind, no other machine except an Olivetti or with Ransmayer-Rodrian type, not an Olivetti with Olivetti type, or a Facit with Ransmayer-Rodrian type could have made P158 in your opinion—could have made it, is that what you are saying to his Honor? A. I am saying it now.

* * *

(3106) The Court: I have just one question to ask you. You have expressed your opinion that you believe the letter was typed with an Olivetti machine. Do you have an opinion as to whether or not it was a portable machine as distinguished from an office machine?

The Witness: If it was typed with an Olivetti it would not be possible to have been typed on an Olivetti portable for the reason that Olivetti never manufactured a portable with 2.54 horizontal spacing, only 2.6.

The Court: Well, then am I to understand your answer that it is your opinion that it was typed on an Olivetti office machine?

The Witness: If it was typed on an Olivetti—

The Court: You said your opinion is—

The Witness: It could have been typed on an Olivetti or a Facit. And if it was—

The Court: In other words, as I understand your answer if it had been typed on an Olivetti machine, (3106a) then in your opinion it would have been what we call an office machine as distinguished from a portable machine?

A. Yes, your Honor.

(Recess.)

(3107) LEWIS W. KOSTER, called as a witness in rebuttal, having been duly sworn, testified as follows:

Direct Examination by Mr. Greenspoon:

Q. Mr. Koster, will you please speak up so that we can all hear you, all the way back there (indicating)? A. Yes, sir.

Q. By whom are you presently employed? A. By the University of Texas.

* * *

(3116) Q. Can you tell us whether or not medium blue, or whatever kind of blue you call it, is or is not imbedded in the fabric of the paper?

Mr. Nizer: I object to that. I don't think this witness is qualified to make such a statement. That

is a chemical analysis, not a photographer's function.

Mr. Greenspoon: That is a reading of photography.

The Court: It doesn't go to the chemistry of the (3117) composition of the paper or the carbon.

Mr. Greenspoon: No, sir.

The Court: I will take this testimony as to that.

A. My opinion, from the appearance, it appears to be matter that is adherent to the surface of the paper and its component fibers.

Q. Can you explain what that means in English? We are laymen here and you have to speak a little simpler than that to us. A. It is something that is sticking to the surface.

Q. Of what? A. Of the paper or its fibers.

Q. Something sticking to the surface of the paper or it fibers? A. Yes, sir.

Q. Can you tell us how it can be sticking to the fibers?

Mr. Nizer: Same objection, your Honor. Is he competent to do this? Do you wish to answer that?

Q. Can you answer that question? A. I can only give you an opinion.

Q. That is what we are asking you for, opinions. A. And my opinion is not based on experience.

The Court: I won't take it then.

(3118) Q. If you don't have an opinion based on experience, you don't have an opinion.

One further question: You are familiar with color, I take it? A. Yes.

Q. In your opinion, could these light blue spots, or medium blue spots, be made with a black carbon ribbon?

Mr. Nizer: Objection.

The Court: Are you familiar with the composition and the makeup of carbons and the capacity to adhere to objects?

The Witness: No, but I know how they look.

The Court: I will not take it then.

Mr. Greenspoon: Your Honor, I am only talking about colorations.

(3119) Q. Let me ask you this question. Would you know what color would be made by a black carbon ribbon impression? Would you know that? A. Yes.

Q. What color would be made by a black carbon ribbon impression? A. It would appear to be black or dark gray.

Q. Would it appear to be this medium blue or whatever color blue you call—

Mr. Nizer: I object again on the ground that this witness certainly hasn't chemical experience or knowledge, I take it. I have great regard for him as a photographer in view of his qualifications. I wonder if he cares to answer that question as an expert.

Mr. Greenspoon: Well, I think his former answer excludes the latter, so I will accept that.

* * *

Frank H. Knight, for Plaintiff, Direct

(3122) October 12, 1973,
10 A. M.

The Court: Good morning, all.
Mr. VanVoorhis: Shall we proceed?
The Court: Yes.
Mr. VanVoorhis: I call Mr. Frank Knight.

FRANK H. KNIGHT, called as a witness, having been duly sworn, testified as follows:

Direct Examination by Mr. VanVoorhis:

Q. Mr. Knight, what is your occupation? A. Production control manager of British Olivetti.

Q. Which is located where? A. In Glasgow, Scotland.

Q. For how long have you occupied that position? A. For thirteen and a half years, since 1960.

Q. Can you state briefly what your duties comprise within that category? A. Briefly, I am responsible for the forward planning and requisitioning of all raw materials, the stores of all (3123) finished parts, the requisitioning of bought-out parts, from outside suppliers, and for the dispatch and invoicing of finished machines.

Q. Can you state briefly what coverage of knowledge that includes of the operations of Glasgow Olivetti? A. Well, I receive all the orders from the sales departments and process them through our records and insure that everything that is required to make those typewriters is available in the factory.

Q. Now I ask you, did British Olivetti, Scotland, make typewriters with 2.54 millimeter horizontal spacing? A. They did.

Q. Can you tell us when? A. They started in approximately 1954 making the 2.54 spacing, which is common to our country because we are in inches, rather than against the Italian parent company who are on the metric.

Q. Do you know as to whether or not other Olivetti typewriter factories produced the 2.54 millimeter horizontal spacing as their regular production over the period when it was used by British Olivetti? A. No. We were the only Olivetti factory producing the 2.54 space as a regular part of our production, and there were a couple of instances when Italy received an (3124) order and had to make special machines, 2.54 spacing, and then we supplied the necessary special parts for them to make them.

Q. Did British Olivetti, Glasgow, Scotland, buy Ransmayer-Rodrian Pica type No. 1? A. Yes. We bought this in 1962.

Q. Over what period of time? A. From 1962 until 1965, '66, as a permanent measure. Then we changed the kind of type that we had and we bought a few more from Ransmayer, but then a decision was taken to mechanize this in Italy and provide British Olivetti with type from Italy. So since that time we have stopped buying from Ransmayer on a large scale.

Q. Can you tell us during this period of time what type of numeral 3's were included in the purchase of Pica No. 1 purchased from Ransmayer-Rodrian during this period of time? A. Flat top 3's and round top 3's.

Q. Will you tell us, please, whether or not with regard to vertical spacing the Olivetti Glasgow Company during this period of time made simply full line or did they make half-line machines? A. The majority of our production is Ruys line spacing—

(3125) Q. Is that the same word we had before, R-u-y-s? A. Yes. That gives a one-line space, a one and a half line space, a two-line space, and a three-line space.

Q. With respect to the platten size, what is the platten diameter of the Ruys platten that you are describing? A. 41.2.

Q. And that produces, normally, approximately what millimeter vertical spacing? A. With a Ruys line space, it gives 4.25 for one line space.

Q. That is two clicks on the ratchet? A. That is correct.

Q. And the machine is capable of three clicks, is that right? A. It is, with position number 2.

Q. The three clicks would be the line and a half spacing, is that correct? A. That's correct.

Q. I would like to ask you whether with respect to this platten size, is the size of the platten continuously the same through use of these machines in customary practice? A. When it leaves the factory, it is in tolerance, but in service it is common practice for the service (3126) engineers who service the customers' typewriters to emory the rubber, clean the rubber and remove any indentations and any marks on it.

Q. Can you give any figures with respect to the extent of such change in the platten size which would affect the type impressions and paper feed? A. It doesn't affect the paper feed.

Q. How about the typing pressure? A. Not the typing pressure.

Mr. VanVoorhis: You may cross-examine.

Cross Examination by Mr. Nizer:

Q. Do not all Olivetti typewriters with Pica type manufactured after 1961 have a key for the numeral 1? A. They do, on the standard typewriter.

Q. During the period after 1961 are you familiar with the fact that other manufacturers of typewriters with Pica type did not have a key for the numeral 1 but, instead, permitted the lower case L to be the number 1? Is that correct? A. In some instances, yes, and some companies use to enable them to give them an additional sign on their keyboard, but we found that our customers liked all the figures in the same row and in the same position.

(3127) Q. So you have the numeral 1? A. Yes.

Q. I show you a document which has been designated in this trial P158 and I call your attention to the 1's which appear, the number 1 which appears at various places in that document.

I call your attention so you will know where. One is the date, you see, 1-6. Then you see the address, 41 Rue Spontini, and then you see Paris 16, the 1 in 16, and then down below it says 1 and 2, the subdivisions. You see that 1? A. Yes.

Q. Now, are these numerals 1 or are they the lower case L, all of them? A. It looks like the lower case L.

Q. Did you ever see the document that you hold in your hand, P158, before this moment when we showed it to you? A. Yes.

Q. Who showed it to you, sir? A. Mr. and Mrs. Tytell.

Q. And by looking at that document, can you tell whether it was typed on the date that it bears or any other date? You can't, can you? A. I cannot tell, personally, no.

(3128) Q. As far as you know, that document could have been typed on a different date than appears on it, isn't that so? A. That is correct.

Q. Did you make any test or have any test made to determine whether that document, P158, was not typed as late as 1967? You made no such test, did you? A. No.

Q. You haven't seen the machine which is alleged to have typed that document, P158? A. No.

Q. So that you never measured the diameter of the platten on any machine which was used to type P158? Of course you haven't, have you? A. No.

Q. And you don't know whether that platten had any impressions or ridges or pits? You don't know that, either? A. Obviously not.

Q. And you don't know, either, whether that platten of the machine that typed P158 had previously been reduced in diameter through the use of emory paper or any other use? A. No.

Q. Can you tell by looking at P158 whether it was typed on a new machine, rather than an old one? (3129) A. No, I cannot.

Q. Is the condition of the type reasonably good as you look at it there? Or, is it badly worn? A. May I remove it from its folder?

Q. Oh, please, yes. A. No, I cannot tell by looking at it whether it is worn or not. Certainly, from the alignment point of view, it's a little out of line but—

Q. As far as the type is concerned, it doesn't look overly used, does it? A. No. Well, I cannot tell that. It is impossible to tell from the letter whether it is over-used or not.

Q. Would the use of a backing sheet on P158, if it had been used—you know what I mean by a backing sheet, Mr. Knight? A. I do, yes.

Q. Would the use of a backing sheet, had it been used when the typing was made of P158, affect the vertical spacing of that document? A. Very, very little.

Q. Pardon? A. Very little.

Q. Would it affect it in the same way as if a carbon had been used and a copy? (3130) A. Sir, this appears to be a very thin sheet of paper.

Q. Yes. A. Therefore, there would be very, very little difference.

Q. Would the use of a backing sheet cause the same embossing on the P158 as would the use of a carbon paper, for example, in your opinion? A. Yes, it would be similar.

Q. Are you familiar with the typewriter manufactured by the Fisette Company of Sweden? A. I am not, no.

Q. So I take it you don't know whether the Fisette uses the Ransmayer-Rodrian Pica No. 1 type? A. I do not know.

Q. Assume that P158, that document, was typed on a machine using Ransmayer-Rodrian Pica No. 1 type and also that P158, that document, was typed on a platten

which had not been reduced in diameter through the use of emory paper, and also assume that P158 had a horizontal spacing of 2.54 millimeters and a vertical spacing of 4.17 millimeters.

Would you not conclude, from those assumptions, that P158, was not typed on an Olivetti machine? That would (3131) be correct, wouldn't it, my statement? A. Yes, if you assume what you said.

* * *

Q. In order to type from Ransmayer-Rodrian, did the British Olivetti order a Camillo 3? A. What do you mean by a Camillo 3?

Q. Oh, I thought that you were familiar with that. A. No. We know it as a round top 3 and a flat top 3.

Q. Are you familiar with the description of Camillo for the round top or not? A. No.

Q. All right. Then let me call it round top. (3132) A. All right.

Q. When you order top from Ransmayer—Rodrian—that is the British Olivetti— did it order round top 3's? A. Round top 3's and flat top 3's.

Q. And is the round top 3, the Camillo, a kind of trademark of the Olivetti type? A. I would not call it a trademark, no.

Q. By trademark, maybe that is a loose word, Mr. Knight.

What I mean is, is it a characteristic distinguishing Olivetti type for the 3? A. No.

Q. You mean that you have both kinds of 3's, one just as characteristic as the other? A. That's correct.

Q. Is that your statement? A. That is correct.

Q. Why do you carry both kinds, the flat and the round top? A. For customer's special requirements—

Q. And do you—you haven't finished, have you? A. I would say that, normally, our standard is round top 3's, but we carry flat top 3's as well.

Q. In other words, the round top 3 is your normal, (3133) traditional supply item for the 3, is that right? A. Yes.

Q. But what you are telling us is that if a customer wants a special order, which would be the flat top 3, you want to be able to supply it to him, so you carry it? A. That is correct.

Q. Is that right, sir? A. That's correct.

Q. I would like to ask one or two more questions.

Can you estimate at all how few special orders of flat top 3's you received as compared to the round top, traditional, between 1962 and 1965? I would like to place it in that period. A. Unfortunately, I cannot, because all the records at that time are now destroyed.

Q. Would you, on your best information, so far as you can, estimate that it would be a very minor aspect, the flat top 3's as compared with the round top 3? A. I would estimate I probably at one time had a stock of between 1,000 and 2,000.

Q. Of the flat top, you mean? A. Of the flat top 3's, yes.

Q. And of the round top? A. I would carry a larger stock, something like (3134) 6,000, 7,000.

Q. Do you have a sales representative, British Olivetti, in Libya? A. Not of British Olivetti, no.

Q. That is what I mean.

Is the shipment cost from Italy plant to Libya much less than from Glasgow to Libya? A. I would assume so but I don't know the actual figures for that, but could I also explain that Olivetti, the parent company, breaks the markets down to whichever factory is producing and they don't switch the markets just purely because of shipping costs.

Q. Well, you have the leading factory in Italy. A. We have a factory in Italy, that is correct.

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Defendant's Memorandum in Response to Court's Inquiries.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

ALLEN & COMPANY,

Plaintiff,

against

OCCIDENTAL PETROLEUM CORPORATION,

Defendant.

67 Civil 4011 (E. W.)

I

INTRODUCTION

On Tuesday, October 16, 1973, the Court requested the parties to file a definitive statement addressed to the following two inquiries:

1. When the alleged agreement in suit was entered into?

2. What were its terms and conditions?

Plaintiff's written response not only failed to state a definitive position in answering the Court's questions, but addressed itself to other issues unrelated to any of the Court's inquiries. This brief will comply with the Court's request and also make some observations about other matters raised by the plaintiff although not encompassed within the Court's limited questions.

Defendant's Memorandum in Response to Court's Inquiries

II

THE ALLEGED AGREEMENT DATED DECEMBER 17, 1964 WAS EXECUTED ON DECEMBER 28, 1964

On December 17, 1964, Dr. Hammer wrote Herbert Allen regarding possible oil concessions in Libya. His offer, however, was not acceptable to Herbert Allen, who, after consultation with his brother Charles Allen and attorney James Deer, submitted a counter-proposal to Dr. Hammer conditioning any obligation on his part b providing that the "costs" of the Libyan venture wou have "to be mutually agreed upon" (333; 2521-2528).

This counter-proposal took the form of an ink modification made in the handwriting of Herbert Allen on the face of Dr. Hammer's letter dated December 17, 1964 (P-71; Pre-Trial Order, Admitted Fact No. 11, page 4; 512-516).

On December 24, 1964, Herbert Allen wrote Dr. Hammer enclosing his counter-proposal and stating (P-72):

> "I am returning herewith your letter of December 17th in duplicate with just *one major change* and that is, that the cost should be 'to be mutually agreed upon' and I have initialled same.
>
> "If there is no disaagreement in this matter will you be kind enough to send me an initialled copy for my files." (Italics supplied.)

Dr. Hammer testified that after Herbert Allen had received his letter dated December 17, 1964 (P-70), Herbert Allen had called him on the telephone to advise that he "had omitted something that was of major importance"; namely, "that the sharing of costs and moneys invested had to be mutually agreed upon" and that Dr. Hammer

had told Herbert Allen "Well, change the letter the way you understand it, initial it and send it to me." (866-7).*

Herbert Allen's counter-proposal was accepted and initialled by Dr. Hammer and a signed copy was returned to Herbert Allen with a covering letter of Dr. Hammer dated December 28, 1964, which constitutes the acceptance of the alleged offer as amended. (P-73; 867; Pre-Trial Order, Admitted Fact No. 12, page 4).

III

THE ESSENTIAL TERMS OF THE PARTIES ARE CLEARLY SET FORTH IN THE LETTER DATED DECEMBER 17, 1964 AND REQUIRE NO ORAL CLARIFICATION OR EXPLANATION.

The essential terms of the parties are clearly set forth in the writing relied upon by plaintiff in support of its claim (P-71) and therefore require no further oral clarification or explanation by the parties. As the Court said (456) "I don't need any explanation for it, it speaks for itself." Indeed, Charles Allen conceded that the letter dated December 17, 1964 as amended by his brother Herbert Allen (P-71) contained all the understandings between the parties regarding the oil concessions in Libya (336):

> "Q. Does not the letter marked Exhibit 12 on the deposition, which is Exhibit A annexed to the complaint, dated December 17, 1964, contain all the understandings between the parties with regard to oil concessions in Libya? A. Yes."

---

*Since Dr. Hammer's deposition was offered by plaintiff, (pp. 646-1179), its contention that Dr. Hammer's failure to repeat and confirm his deposition testimony at the trial leads to an inference in its favor is without merit. *Chesapeake & O. Ry. Co. v. Richardson*, 116 F. 2d 860 (6 Cir., 1941), cited by plaintiff, is wholly inapposite. There, the deposition of the absent witnesses was not offered in evidence on the issue in dispute.

Defendant's Memorandum in Response to Court's Inquiries

This was no slip of the tongue or unwarranted legal conclusion as plaintiff's Brief claims. It was a statement of fact not law; and was borne out by other testimony. Charles Allen testified that he had discussed Dr. Hammer's original proposal (D-70) with Herbert Allen and that Charles had approved his brother's ink modification or counter-proposal which had been suggested by their attorney (333).

In any event, plaintiff can derive no comfort from oral testimony regarding this matter, even if it were considered because it, too, confirmed the written terms. Dr. Hammer testified (P. 671-2):

> "Q. It was an understanding that if certain things happened it would then be a contract? A. Yes.
>
> "Q. What were those certain things which had to happen? A. Well, first Mr. Galic had to be responsible for our obtaining Libyan concessions and, secondly, Allen & Company had to make an investment equal to 25 per cent of the total investment and this had to be mutually agreed upon.
>
> "Q. What had to be mutually agreed upon? A. The terms under—whether or not Allen would make the investment or not. If Allen would not make the investment, there was no agreement."

This was confirmed by Herbert Allen at the trial (511-2):

> "Q. What was the cost to be mutually agreed upon as you understand it in your conversation with Dr. Hammer? A. Whatever costs were incurred in relation to Libya."
>
> * * *
>
> "Q. What costs were to be mutually agreed upon? A. Any costs relating to the Libyan matter."

Defendant's Memorandum in Response to Court's Inquiries

Even Deer, plaintiff's counsel, who suggested the ink modification in the first instance, conceded that defendant could not incur Libyan costs or expenses without plaintiff's prior approval or consent (2526-29; 2531-2).

IV

MUTUAL AGREEMENT ON COSTS WAS INSISTED UPON BY PLAINTIFF FROM THE INCEPTION AS THE HISTORICAL BACKGROUND REVEALS.

The record will show that both prior and subsequent to the London September, 1964 meetings, the plaintiff had consistently conditioned its obligations regarding the Libyan concessions upon its prior approval and consent and that the ink modification proposed by it and accepted by defendant was therefore its real intention, literally expressed.

In the letters exchanged between the parties prior to the London meetings, it was understood that defendant "would welcome Allen & Company's participation on a mutually satisfactory basis" (P-31; P-33). That these letters did not create any agreement between the parties was conceded by plaintiff's counsel at the trial (439-439a):

> "The Court: I am simply allowing this on an introductory basis because the letters [P-31; P-33] make it perfectly clear there is no agreement.
>
> "Mr. Greenspoon: Not to this point."

The meetings held in London in September, 1964 revealed again plaintiff's determination not to be bound to any expenditure without a further opportunity of review and the right to withdraw if he chose.

At pp. 803-5, Dr. Hammer testified:

Defendant's Memorandum in Response to Court's Inquiries

> "Q. What did Herbert Allen say to that? A. Well, * * * he said that Allen & Company would like to participate.
>
> "Q. On what basis? A. 25 per cent.
>
> "Q. Yes? A. And I said that was satisfactory to me, providing * * * that Galic and his friends would be responsible for us getting concessions, and secondly that Allen & Company would make investment in proportion to their percentage. And he said that this would have to be a mutually satisfactory basis. In other words, they wanted the freedom of action of deciding if they wanted to put up their money or didn't want to put up their money at any stage. And I said that that was quite agreeable to me. And with that, we parted, and I don't believe I saw Herbert any more while I was in London."

This deliberate choice not to be bound was again asserted by Herbert Allen to Dr. Hammer in his letter of December 9, 1964 (P-67), in which he again insisted that costs be "mutually approve(d) or disapprove(d)."

This letter was sent approximately three months after the September 1964 London meetings and is wholly dispositive of Herbert Allen's testimony to the contrary positive of Herbert Allen's testimony to the contrary. (Pg. 3-4 of Plaintiff's Current Brief).

Plaintiff quotes Herbert Allen's direct testimony on what "mutually agreed upon" means. The cross examination by court and counsel are omitted. Even with such a one dimensional presentation, the testimony gives an aura of being artificial and contrived. It is stiltedly constructed to meet the impact of the all embracing phrase "costs to be mutually agreed upon," and establishes its own incredibility and falsity.

Defendant's Memorandum in Response to Court's Inquiries

One need only reread it as set forth in plaintiff's brief. It is like a memorized, repetitive recital of a child who has learned it by rote, not a sophsiticated businessman talking to another experienced executive about a business deal.

Was it natural or necessary for Herbert Allen to demand that expenses of some unknown deal be not dishonestly charged to the one being made? Is the reply to this insulting suggestion believable that Dr. Hammer, in effect, assured Mr. Allen that he would not cheat?

Plaintiff's contorted view of the clear meaning of mutual agreement on costs, runs into many difficulties unforeseen by plaintiff.

For example, Deer advised Herbert Allen that the protective phrase be inserted (2518-2526). Did he, as an experienced lawyer, also have the preposterous interpretation in mind which plaintiff urges? Furthermore, Herbert Allen attempted to fortify his explanation by implying that the written insertion was simply an incidental protection, not a serious condition imposed on the obligation. Then why did he describe the insertion as "a major change?" Would a provision merely stating what the law is, be deemed "major", rather than precautionary explicitness?

We conclude that even if the plaintiff's contention were not subjected to cross examination and independent denial, it is bizarre on its face and unworthy of any credence. When the admissions on cross examination paralleling the defense testimony are considered, the "explaining away" of the words "mutually to be agreed upon", is found to be so weightless as to require no counter-weight at all.

Defendant's Memorandum in Response to Court's Inquiries

V

THE CONCEPT OF TWO SEPARATE AGREEMENTS IS AN AFTERTHOUGHT AND REPRESENTS A CHANGE OF PLAINTIFF'S THEORY OF HIS CASE.

In its complaint as well as in its Pre-Trial Memorandum, plaintiff's claim was based upon a single agreement. In the former, plaintiff claimed that the agreement was made in November and December 1964 (¶5), while in the latter, it claimed that the agreement was made "in or about September to December 1964" (page 2). In each instance, the plaintiff relied upon the writing dated December 17, 1964 (P-71) in support of its claim, which was the very writing referred to by Dr. Hammer in his termination letter dated July 16, 1965 (P-124).

The first time that the concept of two separate agreements was introduced in this case was when the Court inquired of Herbert Allen as to the meaning of the reference to first and second concessions mentioned in Dr. Hammer's letter dated December 17, 1964 (466-469a). The improvised answer was contrary to the true meaning of those terms which were lucidly stated by Dr. Hammer. He testified that "first" and "second" concessions did not refer to different concession areas but to distinguish concessions which might derive from Galic-de Rovin-Ogbi (P-36; P-37; P-38) or those derived from Galic Frottier (P-63; P-64) regarding the same concessions. Dr. Hammer said:

> "Mr. Herbert Allen was particularly desirous of making sure that the same arrangement that pertained to any possible concessions we might receive under the arrangement with Ogbi would apply to any possible concessions we might receive under the arrangement with Mr. Frottier." (871-2).

This was confirmed by Herbert Allen in response to the Court's questions (469):

> "Q. Well, what you are saying is with respect to this second concession * * * that you came to the same understanding or the same agreement, whatever term you want to use that you had with Occidental insofar as the first concession? A. You are correct, your Honor."

Of course, the clause costs "to be mutually agreed upon" applied to the concessions whether turned up by Galic in tandem with de Rovin or Galic in tandem with Frottier.

GALIC DID NOT PERFORM

At page 8, plaintiff states that "it is perfectly evident that Galic turned up the concessions which were actually granted." Since the issue of Galic's alleged performance is not encompassed within any of the Court's inquiries, it would suffice to state that plaintiff's gratuitous assertion is devoid of any credible basis and that the Galic-de Rovin-group contributed nothing but hindrance to the venture. At the appropriate time, we will fully demonstrate that the concessions in Libya were obtained by defendant solely on the merits of its bid in accordance with Libyan law.

Respectfully submitted,

LOUIS NIZER
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Of Counsel

Neil A. Pollio
George Berger

Services of three {3} copies of

the within

hereby admitted this 14th day

of February, 1975

Phillips, Nezu, Benjamin, Kuhn & Boller

Attorney for Appellee By Neil F. Boller